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United Nations

Report of the Committee against Torture

Twenty-seventh session
(12-23 November 2001)
Twenty-eighth session
(29 April-17 May 2002)

General Assembly
Official Records
Fifty-seventh session
Supplement No. 44 (A/57/44)

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 17 May 2002, the closing date of the twenty-eighth session of the Committee against Torture, there were 139 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

2. Since the last report Ireland, Lesotho, Mongolia, Nigeria and Saint Vincent and the Grenadines have become parties to the Convention. Furthermore, Belarus withdrew its reservation regarding article 20 of the Convention. Azerbaijan, Mexico and Seychelles made the declaration under article 22, Uganda made the declaration under article 21 and Costa Rica, Germany and Ireland did so under articles 21 and 22. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. The States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention are listed in annex II. The States parties that have made declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

3. The text of the declarations, reservations or objections made by States parties with respect to the Convention, are reproduced in document CAT/C/2/Rev.5. Updated information in that regard may be found in the United Nations Human Rights web site (www.un.org - Sample access - Site index - treaties).

B. Sessions of the Committee

4. The Committee against Torture has held two sessions since the adoption of its last annual report. The twenty-seventh session (485th to 502nd meetings) was held at the United Nations Office at Geneva from 12 to 23 November 2001, and the twenty-eighth session (503rd to 528th) was held from 29 April to 17 May 2002. An account of the deliberations of the Committee at these two sessions is contained in the relevant summary records (CAT/C/SR.485-528).

C. Elections, membership and attendance at sessions

5. In accordance with article 17 of the Convention, the Eighth Meeting of States Parties to the Convention was held at the United Nations Office at Geneva on 28 November 2001. The following four members of the Committee were re-elected for a term of four years beginning on 1 January 2002: Mr. Sayed Kassem El Masry (Egypt), Mr. Ole Vedel Rasmussen (Denmark), Mr. Alexander M. Yakovlev (Russian Federation) and Mr. Yu Mengjia (China). Mr. Fernando Mariño Menéndez (Spain) was elected for the same term.

6. All the members attended the twenty-seventh session except Mr. Antonio Silva Henriques Gaspar, whose term expired on 31 December 2001. All the members attended the twenty-eighth session. Mr. Camara did not attend the meetings of the pre-sessional working group of the twenty-eighth session.

D. Solemn declaration by the newly elected member

7. At the 503rd meeting, on 29 April 2002, Mr. Mariño Menéndez, newly elected member of the Committee, made the solemn declaration upon assuming his duties, in accordance with rule 14 of the rules of procedure.

E. Election of officers

8. At the 503rd meeting, on 29 April 2002, the Committee re-elected the following officers for a term of two years, in accordance with article 18, paragraph 1, of the Convention and rules 15 and 16 of the rules of procedure:

Chairman:	Mr. Peter Burns
Vice-Chairmen:	Mr. Guibril Camara Mr. Alejandro González Poblete Mr. Yu Mengjia
Rapporteur:	Mr. Sayed Kassem El Masry

F. Agendas

9. At its 485th meeting, on 12 November 2002, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General (CAT/C/63) as the agenda of its twenty-seventh session:

1. Adoption of the agenda.

2. Organizational and other matters.

3. Submission of reports by States parties under article 19 of the Convention.

4. Consideration of reports submitted by States parties under article 19 of the Convention.

5. Consideration of information received under article 20 of the Convention.

6. Consideration of communications under article 22 of the Convention.

10. At its 503rd meeting, on 29 April 2002, the Committee amended the provisional agenda submitted by the Secretary-General (CAT/C/68) and decided to include the following items in the agenda of its twenty-eighth session:

1. Opening of the session by the representative of the Secretary-General.

2. Solemn declaration by the newly elected member of the Committee.

3. Election of the officers of the Committee.

4. Adoption of the agenda.

5. Organizational and other matters.

6. Submission of reports by States parties under article 19 of the Convention.

7. Consideration of reports submitted by States parties under article 19 of the Convention.

8. Consideration of information under article 20 of the Convention.

9. Consideration of communications under article 22 of the Convention.

10. Action by the General Assembly at its fifty-sixth session and the Commission on Human Rights at its fifty-eighth session.

11. Annual report of the Committee on its activities.

12. The situation in the Occupied Palestinian Territory (OPT) in the light of the Convention.

G. Working group

11. At its twenty-fifth session in November 2000, the Committee decided, in accordance with rules 61 and 106 of its rules of procedure, to establish, starting with the 2002-2003 biennium, a working group composed of four of its members that would meet for a five-day session during the week preceding each Committee session. The General Assembly, by resolution 56/143 of 19 December 2001 entitled "Torture and other cruel, inhuman or degrading treatment or punishment", approved that request.

12. Prior to the twenty-eighth session, the working group met from 22 to 26 April 2002 in order to consider communications under article 22 of the Convention and make recommendations to the Committee. The working group was composed of Mr. Burns, Mr. Camara, Mr. González Poblete and Mr. Yakovlev.

H. Cooperation between the Committee and the Special Rapporteur on torture of the Commission on Human Rights

13. A meeting was held on 15 May 2002 between the Committee and the newly appointed Special Rapporteur on torture of the Commission on Human Rights, Mr. Theodor van Boven. The Committee and the Special Rapporteur exchanged views on their respective mandates and activities. They agreed to continue exchanging information and to enhance their cooperation and coordination, especially with respect to: (a) countries visited by the Special Rapporteur or under

the inquiry procedure of the Committee (article 20 of the Convention); and (b) individual cases that may in principle be dealt with both by the Committee and the Special Rapporteur under their respective mandates.

I. Participation of Committee members in other meetings

14. A number of members informed the Committee about their participation in various meetings during the period under consideration. Thus, Mr. Rasmussen briefed the Committee about his participation in the meeting organized by the United Nations Population Fund (UNFPA) and the Office of the High Commissioner for Human Rights on the Application of Human Rights to Reproductive and Sexual Health from 25 to 27 June 2001 and in the public hearing on Instruments and Measures to Combat Torture organized by the Committee on Human Rights and Humanitarian Aid of the German Parliament on 17 October 2001. Mr. Burns provided information on the outcome of the thirteenth meeting of persons chairing the human rights treaty bodies, held at the United Nations Office at Geneva from 18 to 22 June 2001. Mr. Burns, Ms. Gaer and Mr. Mavrommatis informed the Committee about their participation at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, from 31 August to 7 September 2001. Mr. Mavrommatis reported on his participation at the tenth session of the open-ended working group of the Commission on Human Rights on a draft optional protocol to the Convention against Torture, held from 14 to 25 January 2002.

J. Amendments to the rules of procedure and methods of work

15. During its twenty-eighth session the Committee revised its rules of procedure. Amendments were made to rules 12 (beginning of term of office for Committee members), 16 (term of office for officers), 61 (establishment of subsidiary bodies), 64 (submission of reports), 65 (non-submission of reports), 66 (attendance by States parties at examination of reports) and 68 (conclusions and recommendations by the Committee). Amendments were also made regarding the procedure for the consideration of complaints received under article 22 of the Convention (rules 96 to 115), as specified in chapter V of the present report. The text of the amended rules is contained in annex X.

16. As a result of the amendments, the Committee decided, inter alia, to establish a mechanism to deal with non-reporting States and States that report but fail to send representatives to the Committee's meetings. Furthermore, the amendment to rule 68 concerned the appointment of rapporteurs for follow-up to conclusions and recommendations on State party reports. The Committee decided that these rapporteurs would seek information as to a State party's implementation of and compliance with the Committee's conclusions and recommendations upon the former's initial, periodic or other reports, and/or would urge the State party to take appropriate measures to that end. The rapporteurs would report to the Committee on the activities they have undertaken pursuant to this mandate. Ms. Gaer and Mr. González Poblete (alternate) were subsequently designated as rapporteurs on follow-up on conclusions and recommendations on State party reports.

K. Statement of the Committee in connection with the events of 11 September 2001

17. At its 501st meeting, on 22 November 2001, the Committee adopted the following statement:

> "By letter dated 11 October 2001, the United Nations High Commissioner for Human Rights solicited the views of the Committee against Torture on the matter of ensuring that the human rights covered by its mandate are maintained with a high visibility in the light of various State responses to the events of 11 September 2001.
>
> "It is in the spirit of this request that the Committee against Torture decided to communicate directly to the States parties to the Convention against Torture the following statement:
>
> > 'The Committee against Torture condemns utterly the terrorist attacks of 11 September and expresses its profound condolences to the victims, who were nationals of some 80 countries, including many States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee is mindful of the terrible threat to international peace and security posed by these acts of international terrorism, as affirmed in Security Council resolution 1368 (2001) of 12 September 2001. The Committee also notes that the Security Council in resolution 1373 (2001) of 28 September 2001 identified the need to combat by all means, in accordance with the Charter of the United Nations, the threats caused by terrorist acts.
> >
> > 'The Committee against Torture reminds States parties to the Convention of the non-derogable nature of most of the obligations undertaken by them in ratifying the Convention.
> >
> > 'The obligations contained in articles 2 (whereby "no exceptional circumstances whatsoever ... may be invoked as a justification of torture"), 15 (prohibiting confessions extorted by torture being admitted in evidence, except against the torturer), and 16 (prohibiting cruel, inhuman or degrading treatment or punishment) are three such provisions and must be observed in all circumstances.
> >
> > 'The Committee against Torture is confident that whatever responses to the threat of international terrorism are adopted by States parties, such responses will be in conformity with the obligations undertaken by them in ratifying the Convention against Torture.'"

18. A copy of this statement was sent to each State party to the Convention.

L. *Joint declaration on the occasion of the United Nations International Day in Support of Victims of Torture, 26 June 2002*

19. In view of the importance attached by the Committee to the adoption of an optional protocol to the Convention establishing an international system of preventive visits to places of detention, the Committee decided to sign a joint declaration, in the context of the International Day, that would focus on that issue. The text of the declaration is as follows:

> "The Committee against Torture, the Special Rapporteur of the Commission on Human Rights on the question of torture, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the United Nations High Commissioner for Human Rights welcome the decision of the Commission on Human Rights at its fifty-eighth session to adopt, and recommend to the Economic and Social Council, the text of the optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. That decision was the result of a decade-long process of consultation and negotiation.
>
> "The optional protocol is designed to assist States parties in implementing their obligation under the Convention to prevent torture by providing for the establishment of effective international and national mechanisms for visiting places where persons are or may be deprived of their liberty. Visits to such places by independent multidisciplinary teams of experts have proved to be a very effective way to prevent treatment of detainees that violates international standards. Both the protective and preventive roles of such mechanisms should be stressed.
>
> "On the occasion of the United Nations International Day in Support of Victims of Torture, we call upon the States Members of the United Nations at the Economic and Social Council and the General Assembly to give the matter of an effective protocol to the Convention their earnest and immediate attention, and to move towards the final adoption of this instrument.
>
> "We also pay tribute to and continue to support those States and organizations of civil society that are committed to ending the practice of torture and are engaged in activities aimed at preventing it and securing redress for its victims."

II. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

20. During the period covered by the present report, initial or periodic reports were submitted to the Secretary-General. Initial reports were submitted by Estonia (CAT/C/16/Add.9), Belgium (CAT/C/52/Add.2) and The Republic of Moldova (CAT/C/32/Add.4). Second reports were submitted by Slovenia (CAT/C/43/Add.4), Azerbaijan (CAT/C/59/Add.1), Iceland (CAT/C/59/Add.2) and Turkey (CAT/C/20/Add.8). Third reports were received from Cyprus (CAT/C/54/Add.2), Croatia (CAT/C/54/Add.3), Colombia (CAT/C/39/Add.4), New Zealand (CAT/C/49/Add.3), the Czech Republic (CAT/C/60/Add.1) and Chile (CAT/C/39/Add.5). Greece submitted its fourth report (CAT/C/61/Add.1).

21. In addition, the Committee at its twenty-seventh and twenty-eighth sessions was informed by the secretariat about the situation of overdue reports. As at 17 May 2002, the situation was as follows:

State party	Date on which the report was due
Initial reports	
Uganda	25 June 1988
Togo	17 December 1988
Guyana	17 June 1989
Guinea	8 November 1990
Somalia	22 February 1991
Yemen	4 December 1992
Bosnia and Herzegovina	5 March 1993
Latvia	13 May 1993
Seychelles	3 June 1993
Cape Verde	3 July 1993
Cambodia	13 November 1993
Burundi	19 March 1994
Antigua and Barbuda	17 August 1994
Ethiopia	12 April 1995
Albania	9 June 1995
Chad	9 July 1995
Tajikistan	9 February 1996
Côte d'Ivoire	16 January 1997
Lithuania	1 March 1997
Democratic Republic of the Congo	16 April 1997
Malawi	10 July 1997
Honduras	3 January 1998
Kenya	22 March 1998
Bahrain	4 April 1999
Bangladesh	3 November 1999
Niger	3 November 1999
South Africa	8 January 2000
Burkina Faso	2 February 2000
Mali	27 March 2000
Turkmenistan	25 July 2000
Japan	29 July 2000
Mozambique	14 October 2000
Qatar	9 February 2001
Ghana	6 October 2001
Botswana	7 October 2001
Gabon	7 October 2001
Lebanon	3 November 2001

State party	Date on which the report was due
Second periodic reports	
Afghanistan	25 June 1992
Belize	25 June 1992
Philippines	25 June 1992
Uganda	25 June 1992
Togo	17 December 1992
Guyana	17 June 1993
Brazil	27 October 1994
Guinea	8 November 1994
Somalia	22 February 1995
Romania	16 January 1996
Nepal	12 June 1996
Yugoslavia	9 October 1996
Estonia	19 November 1996
Yemen	4 December 1996
Jordan	12 December 1996
Monaco	4 January 1997
Bosnia and Herzegovina	5 March 1997
Benin	10 April 1997
Latvia	13 May 1997
Seychelles	3 June 1997
Cape Verde	3 July 1997
Cambodia	13 November 1997
Burundi	19 March 1998
Slovakia	27 May 1998
Antigua and Barbuda	17 August 1998
Costa Rica	10 December 1998
Sri Lanka	1 February 1999
Ethiopia	12 April 1999
Albania	9 June 1999
United States of America	19 November 1999
The former Yugoslav Republic of Macedonia	11 December 1999
Namibia	27 December 1999
Republic of Korea	7 February 2000
Tajikistan	9 February 2000
Cuba	15 June 2000
Chad	8 July 2000
Republic of Moldova	27 December 2000
Côte d'Ivoire	16 January 2001
Democratic Republic of the Congo	16 April 2001
El Salvador	16 July 2001
Lithuania	1 March 2001
Kuwait	6 April 2001

State party	Date on which the report was due
Malawi	10 July 2001
Honduras	3 January 2002
Kenya	22 March 2002

Third periodic reports

Afghanistan	25 June 1996
Belize	25 June 1996
Bulgaria	25 June 1996
Cameroon	25 June 1996
France	25 June 1996
Philippines	25 June 1996
Senegal	25 June 1996
Uganda	25 June 1996
Uruguay	25 June 1996
Austria	27 August 1996
Togo	17 December 1996
Ecuador	28 April 1997
Guyana	17 June 1997
Turkey	31 August 1997
Tunisia	22 October 1997
Chile	29 October 1997
Libyan Arab Jamahiriya	14 June 1998
Australia	6 September 1998*
Algeria	11 October 1998
Brazil	27 October 1998
Guinea	8 November 1998
Somalia	22 February 1999
Malta	12 October 1999
Germany	30 October 1999
Liechtenstein	1 December 1999
Romania	16 January 2000
Nepal	12 June 2000
Venezuela	27 August 2000
Yugoslavia	9 October 2000
Estonia	19 November 2000
Yemen	4 December 2000
Jordan	12 December 2000
Monaco	4 January 2001

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* Requested by the Committee for November 2004.

State party	Date on which the report was due
Bosnia and Herzegovina	5 March 2001
Benin	10 April 2001
Latvia	13 May 2001
Seychelles	3 June 2001
Cape Verde	3 July 2001
Cambodia	13 November 2001
Mauritius	7 January 2002
Burundi	19 March 2002

Fourth periodic reports

Afghanistan	25 June 2000
Argentina	25 June 2000
Belarus	25 June 2000
Belize	25 June 2000
Bulgaria	25 June 2000
Cameroon	25 June 2000
France	25 June 2000
Hungary	25 June 2000
Mexico	25 June 2000
Philippines	25 June 2000
Russian Federation	25 June 2000
Senegal	25 June 2000
Switzerland	25 June 2000
Uganda	25 June 2000
Uruguay	25 June 2000
Canada	23 July 2000
Austria	27 August 2000
Panama	22 September 2000
Togo	17 December 2000
Colombia	6 January 2001
Ecuador	28 April 2001
Guyana	17 June 2001
Peru	5 August 2001
Turkey	31 August 21
Tunisia	22 October 2001
Chile	29 October 2001
China	2 November 2001
Netherlands	19 January 2002
United Kingdom of Great Britain and Northern Ireland	6 January 2002
Italy	10 February 2002
Portugal	10 March 2002

22. The Committee expressed concern at the number of States parties which did not comply with their reporting obligations. With regard in particular to States parties whose reports were more than four years overdue, the Committee deplored the continued failure of those States parties to comply with the obligations they had freely assumed under the Convention. The Committee stressed that it had the duty to monitor the implementation of the Convention and that the non-compliance of a State party with its reporting obligations constituted an infringement of the provisions of the Convention. As a result it decided to request two of its members, Mr. Mariño and Mr. Rasmussen, to make proposals at the twenty-ninth session of the Committee on ways and means to facilitate the submission of overdue reports by States parties.

23. The status of submission of reports as at 17 May 2002, the closing date of the twenty-eighth session of the Committee, appears in annex V to the present report.

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

24. At its twenty-seventh and twenty-eighth sessions, the Committee considered reports submitted by 12 States parties, under article 19, paragraph 1, of the Convention. The following reports were before the Committee at its twenty-seventh session:

Benin: initial report	CAT/C/21/Add.3
Indonesia: initial report	CAT/C/47/Add.3
Israel: third periodic report	CAT/C/54/Add.1
Ukraine: fourth periodic report	CAT/C/55/Add.1
Zambia: initial report	CAT/C/47/Add.2

25. The following reports were before the Committee at its twenty-eighth session:

Denmark: fourth periodic report	CAT/C/55/Add.2
Luxembourg: third periodic report	CAT/C/34/Add.14
Norway: fourth periodic report	CAT/C/55/Add.4
Russian Federation: third periodic report	CAT/C/34/Add.15
Saudi Arabia: initial report	CAT/C/42/Add.2
Sweden: fourth periodic report	CAT/C/55/Add.3
Uzbekistan: second periodic report	CAT/C/53/Add.1

26. In accordance with rule 66 of the rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee when their reports were examined. All of the States parties whose reports were considered sent representatives to participate in the examination of their respective reports. The report of Saudi Arabia, which had initially been scheduled for consideration at the twenty-seventh session, was postponed at the request of the State party, which was unable to send a delegation to that session. Similarly, the report of Venezuela, which had been scheduled for consideration at the twenty-eighth session, was postponed to the twenty-ninth session at the request of the State party which was unable to send a delegation to the twenty-eighth session.

27. In accordance with the decision taken by the Committee at its fourth session,* country rapporteurs and alternate rapporteurs were designated for each of the reports considered. The list appears in annex VI to the present report.

28. In connection with its consideration of reports, the Committee also had before it the following documents:

(a) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/4/Rev.2);

(b) General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14/Rev.1).

29. In accordance with the decision taken by the Committee at its eleventh session,** the following sections, arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of the reports, contain references to the reports submitted by the States parties and to the summary records of the meetings of the Committee at which the reports were considered, as well as the text of conclusions and recommendations adopted by the Committee with respect to the States parties' reports considered at its twenty-seventh and twenty-eighth sessions.

Benin

30. The Committee considered the initial report of Benin (CAT/C/21/Add.3) at its 489th and 492nd meetings (CAT/C/SR.489 and 492), held on 15 and 16 November 2001, and adopted the following conclusions and recommendations.

A. Introduction

31. The Committee welcomes the initial report of Benin, although it notes that the report, due on 10 April 1993, was submitted seven years late. The report was prepared in accordance with the guidelines regarding the form and contents of initial reports of States parties. The Committee nevertheless notes that it does not contain specific examples of the implementation of the Convention. However, the Committee notes, as the head of the delegation explained, that the report refers only to the so-called "revolutionary" period and a short period following the promulgation of the 1990 Constitution, thus preventing the Committee from evaluating the current situation with regard to the implementation of the Convention.

32. The Committee welcomes the information provided by the delegation of Benin and the frank, honest and constructive dialogue which took place.

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* Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/45/44), paras. 14-16.

** Official Records of the General Assembly, Forty-ninth session, Supplement No. 44 (A/49/44), paras. 12-13.

B. Positive aspects

33. The Committee takes note with satisfaction of the following elements:

(a) The standing of the international treaties ratified by Benin under the Beninese Constitution, which ranks them higher than domestic law;

(b) The strict prohibition of the practice of torture provided for in article 18 of the Constitution;

(c) The ratification by the State party of a set of international treaties relating to the protection of human rights. The Committee takes note in particular of the signing on 24 September 1999 of the Rome Statute establishing the International Criminal Court;

(d) The State party's commitment to put an end to the large-scale violations of human rights which took place during the so-called "revolutionary" period and to provide better protection for human rights through the adoption of legislation and regulations;

(e) Article 558 of the Code of Criminal Procedure, which appears to be in conformity with the provisions of article 5, paragraph 2, of the Convention on universal jurisdiction;

(f) The establishment of the Benin Human Rights Commission and of the Human Rights Department in the Ministry of Justice and Legislation, by Decree No. 97/30 of 29 January 1997;

(g) The compensation of some persons who were subjected to torture during the so-called "revolutionary" period, based on the recommendations of the Interministerial Commission set up by Degree No. 91-95 of 27 May 1991;

(h) The improvement of physical conditions in prisons inter alia through the construction of a new prison with a capacity of 1,000 prisoners.

C. Subjects of concern

34. The Committee is concerned about the following:

(a) The absence of a definition of torture strictly in keeping with article 1 of the Convention, and the lack of specific penalties for the crime of torture, thus creating a gap that does not allow for the full implementation of the Convention;

(b) Citizens' apparent mistrust of the police and justice system and the resulting recurring problem of mob justice;

(c) Overcrowding and deplorable physical conditions in prisons, particularly the lack of hygiene, adequate food or appropriate medical care, despite efforts by the State party and assistance from non-governmental organizations;

(d) The lack of attention paid to human rights, especially to the prohibition of torture, in training programmes for civilian and military law enforcement personnel and medical personnel, despite positive initiatives by the Benin Human Rights Commission and the Human Rights League.

(e) The possibility, under article 18 of the Constitution, of extending police custody for up to eight days in exceptional cases;

(f) The existence in Beninese legislation of legal provisions (arts. 327 and 328 of the Criminal Code) exonerating anyone found guilty of offences or crimes when such acts were ordered in accordance with the law or by a legitimate authority or were committed in self-defence, which is contrary to the provisions of article 2, paragraph 2, of the Convention with regard to torture;

(g) The lack of medical and psychological rehabilitation programmes for torture victims;

(h) The possibility of keeping female detainees incommunicado for three months;

(i) The danger that the Amnesty Law, adopted prior to the adoption of the Convention against Torture, might give rise to a situation of impunity.

D. Recommendations

35. The Committee makes the following recommendations:

(a) In order genuinely to fulfil its treaty obligations, the State party must adopt a definition of torture that is fully in keeping with article 1 of the Convention and must provide for appropriate penalties;

(b) Measures must be taken to establish regulations on the right of torture victims to fair and adequate compensation from the State and to set up programmes for victims' physical and psychological rehabilitation;

(c) The State party should adopt the necessary legislative measures to bring the provisions of the Criminal Code into line with article 2 of the Convention;

(d) The State party should strengthen human rights education and promotion activities, particularly on the prohibition of torture, for law enforcement officials and medical personnel;

(e) The State party should take measures to eradicate the practice of mob justice;

(f) The Committee reminds the State party of its obligation to conduct immediate and impartial investigations and to prosecute persons suspected of human rights violations, particularly torture;

(g) The State party should continue to take steps to improve physical conditions in prisons and substantially to reduce the duration of incommunicado detention;

(h) The Committee encourages the State party to make the declarations provided for in articles 21 and 22 of the Convention, in order to give better effect to its good intentions to ensure respect for human rights in general and the prohibition of torture in particular;

(i) The State party should widely disseminate the Committee's conclusions and recommendations concerning Benin;

(j) The State party should submit its second periodic report, which should have been submitted in April 1997, as soon as possible, in order to comply with the reporting frequency stipulated in article 19 of the Convention.

Indonesia

36. The Committee considered the initial report of Indonesia (CAT/C/47/Add.3) at its 492nd and 495th meetings, held on 16 and 19 November 2001 (CAT/C/SR.492 and 495), and adopted the following conclusions and recommendations.

A. Introduction

37. The Committee welcomes the initial report of Indonesia, although it notes that the report, due in November 1999, was submitted with more than one year's delay. It notes that the report mainly addresses legal provisions and lacks detailed information on the implementation of the Convention against Torture in practice. However, the Committee wishes to express its appreciation for the efforts of the State party to provide added information as it engaged in a constructive dialogue with the Committee.

38. The Committee welcomes the clarification made by the State party confirming that it recognized the competence of the Committee as provided for in article 20 of the Convention.

39. The Committee notes that Indonesia has not made the declarations provided for in articles 21 and 22 of the Convention.

B. Positive aspects

40. The Committee takes note of the following positive aspects:

(a) The ongoing efforts of the State party to reform the legal system and revise its Constitution and legislation in order to safeguard universal human rights, including the right not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment;

(b) The adoption of Act No. 26/2000 on the establishment of human rights courts, which have jurisdiction over gross violations of human rights, including torture, and the State's assurances that the human rights courts will be operational by early December 2001;

(c) The plans outlined by the representatives of the State party for the imminent finalization of new laws on the protection of victims and witnesses, and on the establishment of a Commission of Truth and Reconciliation to re-examine past cases of human rights violations which have had a significant impact on the nation;

(d) The formal separation of the police from the military in 1999, as a vital aspect of the effort to ensure an independent civilian authority responsible for maintaining law and order;

(e) The recognition by the State party that eradication of torture is linked to overcoming a culture of violence within the army and the police, and the assurances that efforts to continue to work towards this goal are a high priority of the Government;

(f) The acknowledgement of the pressing need to introduce a centralized register of detainees for the whole country, and assurances that the State party is currently studying the implementation of such a system;

(g) The interest expressed by the State party in the possibility of the Government's cooperating with national non-governmental organizations in monitoring prisons and places of detention;

(h) The statement made by the representative of the State party relating to a possible visit next year of the Special Rapporteur on the independence of judges and lawyers.

C. Factors and difficulties impeding the implementation of the Convention

41. The Committee is aware of the difficulty faced by the State party in view of the armed secessionist conflicts in several parts of the territory of the State party, and in view of the geographical characteristics of the Indonesian archipelago. In addition, the Committee also recognizes the difficulties in the political transition towards a democratic system of government.

D. Subjects of concern

42. The Committee is concerned about:

(a) The large number of allegations of acts of torture and ill-treatment committed by members of the police forces, especially the mobile police units ("Brimob"), the army (TNI), and paramilitary groups reportedly linked to authorities, and in areas of armed conflict (Aceh, Papua, Maluku, etc.);

(b) Allegations of excessive use of force employed against demonstrators or for purposes of investigation;

(c) Allegations that paramilitary groups, reported to be perpetrators of torture and ill-treatment in Indonesia, are supported by some parts of the military, and sometimes reportedly are joined by military personnel;

(d) Allegations of numerous attacks directed against human rights defenders, sometimes leading to death;

(e) Allegations that human rights abuses related to the Convention are sometimes committed by military personnel employed by businesses in Indonesia to protect their premises and to avoid labour disputes;

(f) Allegations of inadequate protection against rape and other forms of sexual violence, which are frequently alleged to be used as forms of torture and ill-treatment;

(g) The high number of persons reported to be suffering from the after-effects of torture and other forms of ill-treatment.

43. The Committee is also concerned about:

(a) A climate of impunity, promoted in part by the fact that there has been little progress in bringing to trial members of the military, the police or other State officials, particularly those holding senior positions, who are alleged to have planned, commanded and/or perpetrated acts of torture and ill-treatment;

(b) The failure of the State party to provide in every instance prompt, impartial and full investigations into the numerous allegations of torture reported to the authorities, as well as to prosecute alleged offenders, as required in articles 12 and 13 of the Convention;

(c) The insufficient level of guarantees of the independence and impartiality of the National Commission on Human Rights (Komnas-HAM) which hinders it in fully carrying out its mandate, which includes sole responsibility under Law 2000/26 for conducting initial investigations relating to gross violations of human rights, including torture, prior to forwarding cases to the Attorney-General for prosecution. Because only the Attorney-General has the authority to decide whether to initiate criminal proceedings, the Committee is further concerned that all the reports of Komnas-HAM on preliminary investigations are not published, and that Komnas-HAM does not have the right to challenge a decision by the Attorney-General not to prosecute a case.

44. The Committee further expresses its concern about the following:

(a) The country's penal legislation does not adequately define the offence of torture in terms consistent with article 1 of the Convention; as a result, torture is not punishable by appropriate penalties in the criminal code of the State party, as required in article 4, paragraph 2, of the Convention. The Committee notes, in this regard, that the definition of torture in Law 2000/26 is not fully consistent with article 1 of the Convention;

(b) The geographical and time limitations on the mandate of the proposed ad hoc human rights court on East Timor;

(c) The inadequacy of measures to ensure that the second amendment to the 1945 Constitution, relating to the right not to be prosecuted based on retroactive law, will not apply to offences such as torture and crimes against humanity which under international law are already criminalized;

(d) The lack of adequate protection of witnesses and victims of torture, who can be subject to intimidation and abuse by officials;

(e) The length and terms of police custody, and the lack of adequate guarantees of the rights of persons deprived of liberty, including to notify a close relative or third party and to have access to medical assistance and counsel of their choice;

(f) In spite of the formal separation of the police and the military, the latter continues to be associated with allegations of torture and ill-treatment. The Committee is particularly concerned over the absence of habeas corpus for the military;

(g) Insufficient legal protection ensuring, as set out in article 3 of the Convention, that no person can be expelled, returned or extradited to another State where he/she would be in danger of being subjected to torture;

(h) The lack of response to communications sent by the Special Rapporteur on torture, as well as the fact that he has not been invited to visit by the State party, despite requests dating back to 1993;

(i) The inadequate cooperation with the Serious Crimes Unit of the United Nations Transitional Administration in East Timor (UNTAET);

(j) The absence of statistics and other information regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by gender, ethnic group, geographical region, and type and location of detention.

E. Recommendations

45. The Committee recommends that the State party:

(a) Amend the penal legislation so that torture and other cruel, inhuman or degrading treatment or punishment are offences strictly prohibited under criminal law, in terms fully consistent with the definition contained in article 1 of the Convention. Adequate penalties, reflecting the seriousness of the crime, should be adopted;

(b) Establish an effective, reliable and independent complaint system to undertake prompt, impartial and effective investigations into allegations of ill-treatment and torture by police and other officials and, where the findings so warrant, to prosecute and punish perpetrators, including senior officials;

(c) Ensure that all persons, including senior officials, who have sponsored, planned, incited, financed or participated in paramilitary operations using torture will be appropriately prosecuted;

(d) Take immediate measures to strengthen the independence, objectivity, effectiveness and public accountability of the National Commission on Human Rights (Komnas-HAM), and ensure that all its reports to the Attorney-General are published in a timely fashion;

(e) Ensure that the proposed ad hoc human rights court for East Timor will have the capacity to consider the many human rights abuses which were alleged to have occurred there during the period between 1 January and 25 October 1999;

(f) Ensure that crimes under international law such as torture and crimes against humanity committed in the past are investigated and, where appropriate, prosecuted in Indonesian courts;

(g) Continue measures of police reform to strengthen the independence of the police from the military, as an independent civilian law enforcement agency;

(h) Reduce the length of pre-trial detention, ensure adequate protection for witnesses and victims of torture and exclude any statement made under torture from consideration in any legal proceedings, except against the torturer;

(i) Ensure that no person can be expelled, returned, or extradited to another State where there are substantial grounds for believing that that person would be in danger of being subjected to torture, in accordance with article 3;

(j) Ensure that human rights defenders are protected from harassment, threats and other attacks;

(k) Reinforce human rights education to provide guidelines and training, regarding in particular the prohibition of torture, for law enforcement officials, judges, and medical personnel;

(l) Invite the Special Rapporteur on torture to visit its territories;

(m) Fully cooperate with UNTAET, in particular by providing assistance in investigations or court proceedings in accordance with the memorandum of understanding signed in April 2000, including affording the members of the Serious Crimes Unit full access to relevant files, authorizing visits to Indonesia and East Timor, and transferring suspects for trials in East Timor;

(n) Take immediate steps to address the urgent need for rehabilitation of the large number of victims of torture and ill-treatment in the country;

(o) Make the declarations provided for in articles 21 and 22 of the Convention;

(p) Include, in its next periodic report, statistical data regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by, inter alia, gender, ethnic group, geographical region, and type and location of detention. In addition, information should be provided regarding complaints and cases heard by domestic bodies, including the results of investigations made and the consequence for the victims in terms of redress and compensation;

(q) Widely disseminate the Committee's conclusions and recommendations throughout the country, in all appropriate languages.

Comments by the Government of Indonesia

46. The Committee considered the note verbale dated 7 December 2001 from the Permanent Mission of Indonesia to the United Nations Office at Geneva containing comments and additional information on the conclusions and recommendations adopted by the Committee. The Committee thanks the Government of Indonesia for the note and welcomes the significant number of legal and institutional reforms which are currently under way in Indonesia. The contents of the note verbale will be reproduced in document CAT/C/GC/2001/1.

Israel

47. The Committee considered the third periodic report of Israel (CAT/C/54/Add.1) at its 495th and 498th meetings, on 20 and 21 November 2001 (CAT/C/SR.495 and 498), and adopted the following conclusions and recommendations.

A. Introduction

48. The Committee welcomes the third periodic report of Israel, due on 1 November 2000 and received on 15 March 2001. The report is in full conformity with the guidelines of the Committee on the preparation of State party periodic reports.

49. The Committee compliments the State party for ensuring the submission of its periodic reports in a timely fashion and welcomes the continuation of a constructive dialogue with Israel.

B. Positive aspects

50. The Committee welcomes the following:

(a) The September 1999 Supreme Court judgement in the case of Public Committee against Torture in Israel v. The State of Israel which held that the use of certain interrogation methods by the Israel Security Agency (ISA) involving the use of "moderate physical pressure" was illegal as it violated constitutional protection of the individual's right to dignity;

(b) The issuance by authorities of the ISA of a directive to all personnel that the decision of the Court should be strictly adhered to in all investigations conducted by the ISA;

(c) The decision by the Government of Israel not to initiate legislation that would authorize the use of physical means in interrogations conducted by the police or the ISA;

(d) The Israeli Supreme Court decision of April 2000 according to which the continued detention of Lebanese detainees held in Israel who did not constitute a threat to national security could not be authorized and the subsequent release of many Lebanese detainees;

(e) Israel's regular contribution to the United Nations Voluntary Fund for Victims of Torture;

(f) The provision of prompt judicial review of persons under detention upon their petition to the Supreme Court;

(g) The transfer, in 1994, of the responsibility for investigation of complaints against the ISA to the Ministry of Justice;

(h) The creation of a judicial commission of inquiry into the events of October 2000, which resulted in the death of 14 persons.

C. Factors and difficulties impeding the application of the Convention

51. The Committee is fully aware of the difficult situation of unrest faced by Israel, particularly in the Occupied Territories, and understands its security concerns. While recognizing the right of Israel to protect its citizens from violence, it reiterates that no exceptional circumstances may be invoked as justification of torture (art. 2, para. 2, of the Convention).

D. Subjects of concern

52. The Committee expresses concern about the following matters:

(a) While acknowledging the importance of the September 1999 Supreme Court decision, the Committee regrets certain of its consequences:

(i) The ruling does not contain a definite prohibition of torture;

(ii) The Court prohibits the use of sleep deprivation for the purpose of breaking the detainee, but stated that if it was merely incidental to interrogation, it was not unlawful. In practice, in cases of prolonged interrogation it is impossible to distinguish between the two conditions;

(iii) The Court indicated that ISA interrogators who use physical pressure in extreme circumstances ("ticking bomb cases") might not be criminally liable as they may be able to rely on the "defence of necessity";

(b) Despite the Israeli argument that all acts of torture, as defined in article 1 of the Convention, are criminal offences under Israeli law, the Committee remains unconvinced and reiterates its concern that torture as defined by the Convention has not yet been incorporated into domestic legislation;

(c) Allegations continue to be received concerning the use of interrogation methods by the ISA against Palestinian detainees that were prohibited by the September 1999 ruling of the Supreme Court;

(d) Torture and ill-treatment of Palestinian minors is alleged, in particular of those detained in the Gush Etzion police station. The difference in the definition of a child in Israel and in the Occupied Territories is also a matter of concern. While under Israeli law majority is attained at the age of 18, military order No. 132 defines a minor as someone under the age of 16. (In Israel, including the Occupied Territories, no minors under the age of 12 years can be held criminally responsible);

(e) While noting a substantial decrease since the examination of its previous report in the number of persons held in administrative detention, the Committee continues to be concerned that administrative detention does not conform with article 16 of the Convention;

(f) The continued use of incommunicado detention, even in the case of children, is a matter of grave concern to the Committee;

(g) Despite the numerous allegations of torture and ill-treatment by law enforcement officials received by the Committee, very few prosecutions have been initiated against alleged perpetrators;

(h) While noting that according to the delegation any allegation of physical violence against a detainee is always treated and investigated as a criminal offence, the Committee is concerned that the Department for the Investigation of Police Misconduct (DIPM) may decide that a police officer or ISA investigator should only be subject to disciplinary action, in lieu of criminal proceedings. This may amount to a violation of article 7, paragraph 1, of the Convention;

(i) Israeli policies on closure may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment (article 16 of the Convention);

(j) Israeli policies on house demolitions may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment (article 16 of the Convention);

(k) The judicial practice of admitting objective evidence derived from an inadmissible confession is of concern to the Committee;

(l) The Committee is also concerned at instances of "extrajudicial killings" drawn to its attention.

E. Recommendations

53. The Committee makes the following recommendations:

(a) The provisions of the Convention should be incorporated by legislation into the domestic law of Israel; in particular, a crime of torture as defined in article 1 of the Convention should be enacted;

(b) The practice of administrative detention in the Occupied Territories should be reviewed in order to ensure its conformity with article 16;

(c) The State party should review its laws and policies so as to ensure that all detainees, without exception, are brought promptly before a judge and are ensured prompt access to a lawyer;

(d) The State party should ensure that interrogation methods prohibited by the Convention are not utilized by either the police or the ISA in any circumstances;

(e) In view of the numerous allegations of torture and other ill-treatment by law enforcement personnel, the State party should take all necessary effective steps to prevent the crime of torture and other acts of cruel, inhuman or degrading treatment or punishment and institute effective complaint, investigative and prosecution mechanisms relating thereto;

(f) All victims of torture and ill-treatment should be granted effective access to appropriate rehabilitation and compensation measures;

(g) The State party should desist from the policies of closure and house demolition where they offend article 16 of the Convention;

(h) The State party should intensify human rights education and training activities, in particular concerning the Convention, for the ISA, the Israel Defence Forces, police and medical doctors;

(i) Necessity as a possible justification for the crime of torture should be removed from the domestic law;

(j) Such legislative measures as are necessary should be taken to ensure the exclusion of not merely a confession extorted by torture, but also any evidence derived from such confession;

(k) Israel should consider withdrawing its reservation to article 20 and declaring in favour of articles 21 and 22.

Ukraine

54. The Committee considered the fourth periodic report of Ukraine (CAT/C/55/Add.1) at its 488th, 491st and 499th meetings (CAT/C/SR.488, 491 and 499), and adopted the following conclusions and recommendations.

A. Introduction

55. The Committee welcomes the punctual submission of the fourth periodic report of Ukraine. It notes that the report was not in total conformity with the Committee's guidelines for the preparation of periodic reports. The Committee also notes that the report mainly addresses legal provisions and lacks detailed information with respect to some articles of the Convention as well as information on the follow-up to the recommendations it made after the examination of the third periodic report. However, the Committee wishes to express its appreciation for the extensive and informative oral answers given by the delegation of the State party during the consideration of the report.

B. Positive aspects

56. The Committee notes with appreciation:

(a) The ongoing efforts by the State party to reform its legislation, including the adoption of a new Criminal Code, which contains an article qualifying torture as a specific crime, the establishment of a new Constitutional Court, the enactment of new legislation relating to the protection of human rights and the adoption of a new Law on Immigration;

(b) That although Ukraine is not a party to the 1951 Convention relating to the Status of Refugees, nor to its 1967 Protocol, it has adopted a new Law on Refugees in June 2001 that adheres, inter alia, to that Convention's definition of "refugee". The Committee also welcomes the adoption of a new Citizenship Law in January 2001, which enables formerly deported persons to return to Ukraine and obtain Ukrainian citizenship;

(c) The removal from the State Secret Act of offences concerning breaches of human rights;

(d) The abolition of the death penalty;

(e) The information included in the report that, by Act of 5 November 1998, Ukraine acknowledged the Committee's jurisdiction, as provided for by articles 21 and 22 of the Convention;

(f) The establishment of the Office of the Commissioner for Human Rights (Ombudsman), charged with the protection of human rights in Ukraine, and that the Ombudsman can visit and have full access to all places where persons are deprived of liberty;

(g) The assurances given by the head of delegation that the reports of the three visits of the European Committee for the Prevention of Torture, which took place in 1998, 1999 and 2000, will be published.

C. Subjects of concern

57. The Committee expresses its concern about the following:

(a) The numerous instances indicating that torture is still being regularly practised in the State party and that, according to the Commissioner for Human Rights, 30 per cent of prisoners are victims of torture;

(b) The forced deportation of four Uzbek nationals, members of the Uzbek opposition, who were at high risk of being subjected to torture and whose case was the subject of an urgent appeal by the Special Rapporteur on torture;

(c) The fact that judges sit on the newly formed "coordination committees on crime fighting" together with representatives of the Ministry of the Interior, a situation which is contrary to the principle of the separation of powers and may affect the independence of the judiciary;

(d) The numerous convictions based on confessions and the criteria for the promotion of investigators which are said to include the number of solved crimes, which can lead to torture and ill-treatment of detainees or suspects to force them to "confess";

(e) Failure on the part of the authorities to carry out prompt, impartial and thorough investigations into allegations of such acts and to prosecute and punish those responsible;

(f) The information received by the Committee that relatives and lawyers are informed about the detention only after the arrested person has been transferred from police custody to a pre-trial detention facility, a process that usually takes not less than two weeks. The Committee is also concerned about the lack of clear legal provisions about the exact time when a detained person can exercise his right to a defence counsel, a medical examination, and to inform a family member of his detention;

(g) The duration of pre-trial detention, which can last for up to 18 months according to the law but which in practice can be extended for up to three years, of administrative detention for up to 15 days, and of detention of "vagrants" for up to 30 days;

(h) Long-term prison sentences for the non-violent expression of ideas and information;

(i) Reported threats and harassment, including ill-treatment, of independent journalists and others who have raised allegations of abuses by officials;

(j) Overcrowding and lack of access to basic hygienic facilities and adequate medical care, as well as the high incidence of tuberculosis, in prisons and pre-trial detention centres;

(k) The lack of adequate training of police and prison personnel in their duties under the law and on the rights of detainees;

(l) Despite certain progress, the practise of bullying and hazing (*dedovshchina*) of young conscript soldiers is still widely practised in the armed forces.

D. Recommendations

58. The Committee recommends that the State party:

(a) Take effective measures to prevent acts of torture and ill-treatment in its territory, in view of the persistent reports that torture is still regularly practised;

(b) Deposit with the Secretary-General its declaration accepting the Committee's competence with respect to articles 21 and 22 of the Convention and the removal of its reservation in regard to article 20;

(c) Ensure that its competent authorities strictly observe the principle enshrined in article 3 of the Convention not to expel, return or extradite a person to a State where he/she might be subject to torture;

(d) Establish its jurisdiction over offences of torture even if the offender is not a national of the State party, but is present in any territory under its jurisdiction and, where it does not exercise jurisdiction that it extradite the offender;

(e) Clarify and reconcile the sometimes contradictory provisions pertaining to the time at which a detained person has the right to a defence counsel and to ensure that this right is exercised from the moment of arrest;

(f) Ensure that there is a legal prohibition against carrying out interrogations of detainees without the presence of a defence counsel of his/her choice;

(g) Take appropriate measures to ensure the independence of the judiciary and counsel for defence, as well as the objectivity of the Procuracy, in the performance of their duties, in conformity with international standards;

(h) Ensure in practice absolute respect for the principle of the inadmissibility of evidence obtained through torture;

(i) Take effective steps to establish a fully independent complaints mechanism to ensure prompt, independent and full investigations into allegations of torture, including numerous detailed allegations received from various non-governmental organizations, both national and international;

(j) Take effective measures to improve conditions in prisons and pre-trial detention centres, including those relating to space, various facilities and sanitation, and establish a system of inspection of prisons and detention centres by independent monitors, whose findings should be published;

(k) Shorten the current 72-hour pre-trial detention period during which detainees may be held in isolation cells prior to being brought before a judge;

(l) Expedite the process of training of law enforcement and medical personnel as to their duty to respect the rights and dignity of persons deprived of liberty;

(m) Take effective measures to prevent and punish trafficking of women and other forms of violence against women;

(n) Adopt a more effective system to end the practise of bullying and hazing (*dedovshchina*) in the armed forces, through training and education, and prosecute and punish offenders;

(o) Establish a procedure for providing redress for victims of torture, including fair and adequate compensation;

(p) Continue the programme against tuberculosis in prisons and pre-trial detention centres;

(q) Widely disseminate the Committee's conclusions and recommendations, in all appropriate languages, in the country.

Zambia

59. The Committee considered the initial report of Zambia (CAT/C/47/Add.2) at its 494th and 497th meetings, held on 19 and 20 November 2001 (CAT/C/SR.494 and 497) and adopted the following conclusions and recommendations.

A. Introduction

60. The Committee welcomes the report of Zambia and expresses appreciation for its frank and thorough approach. The Committee also welcomes the candid and comprehensive responses, of the high-level delegation to the questions raised during the dialogue.

B. Positive aspects

61. The Committee notes with satisfaction the following elements:

(a) The State party's withdrawal of its reservation made with respect to article 20 of the Convention;

(b) The State party's commitment to:

(i) Introduce a crime of torture in accordance with article 4 of the Convention;

(ii) Proceed urgently with appropriate legislation and other measures to ensure the incorporation of the Convention into domestic law;

(iii) Ensure the exclusion of confessions obtained by torture and to look into the issue of derivative evidence;

(iv) Make a declaration with respect to articles 21 and 22 of the Convention; and

(v) Remove the function of prosecution from the police to the Director of Public Prosecutions (DPP);

(c) The enactment of the Zambia Police (Amendment) Act (No. 14 of 1999) which provides measures to protect and monitor persons in police custody;

(d) The implementation of a Juvenile Justice Administration Transformation Scheme, which aims to improve the handling of juveniles within the criminal justice system;

(e) The legal prohibition of corporal punishment; and

(f) The creation of the Human Rights Commission.

C. Factors and difficulties impeding the application of the Convention

62. The Committee recognizes the difficulties that the State party has experienced in the political transition towards a democratic system of governance. It is similarly aware of the significant financial and technical constraints that the State party faces.

D. Subjects of concern

63. The Committee expresses concern about the continued allegations of widespread use of torture together with the apparent impunity enjoyed by its perpetrators.

64. The Committee notes with concern that the State party has neither incorporated the Convention into its legislation nor introduced corresponding provisions in respect of several articles, in particular:

(a) The definition of torture (art. 1);

(b) The criminalization of torture (art. 4);

(c) The prohibition of cruel punishment in the penal system (art. 16);

(d) Recognition of torture as an extraditable offence (art. 8);

(e) Systematic review of interrogation rules (art. 11); and

(f) Jurisdiction over acts of torture, including those committed abroad (art. 5).

65. Concern is also expressed regarding:

(a) The delay in investigating allegations of torture and in bringing suspects to timely trial;

(b) Poor prison conditions that affect the health of both inmates and wardens, in particular the lack of health care staff and medicines as well as serious overcrowding;

(c) The incidence of violence against women in society, which is illustrated by reported incidents of violence in prisons and domestic violence.

E. Recommendations

66. The Committee recommends that the State party:

(a) Incorporate the Convention into its legal system;

(b) Adopt a definition of torture which is fully in keeping with article 1 of the Convention and provides for appropriate penalties;

(c) Take appropriate measures to ensure jurisdiction over crimes of torture, wherever they may occur;

(d) Undertake legal and other measures to address impunity and ensure that acts of torture are prosecuted to the full extent of the law and that complainants have access to legal advice as necessary;

(e) Undertake legal and other measures to ensure the systematic review of interrogation rules, instructions, methods and practices;

(f) Strengthen training and educational programmes for law enforcement personnel on the prohibition of torture;

(g) Establish rehabilitation centres for victims of torture;

(h) Establish programmes to prevent and combat violence against women, including domestic violence; and

(i) Ensure the early and effective operation of the Police Public Complaints Authority.

67. While welcoming the Prisons (Amendment) Act which provides for the establishment of open air prisons, the Committee urges the State party to enhance initiatives to reduce overcrowding, increase the use of non-custodial sentences and generally improve detention facilities, especially because of the adverse effects on the health of inmates and prison staff.

Denmark

68. The Committee considered the fourth periodic report of Denmark (CAT/C/55/Add.2) at its 508th, 510th and 518th meetings, on 2, 3 and 10 May 2002 (CAT/C/SR.508, 510 and 518), and adopted the following conclusions and recommendations.

A. Introduction

69. The Committee welcomes the fourth periodic report of Denmark, which was submitted on time and in full conformity with the Committee's guidelines for the preparation of periodic reports. In particular, the Committee welcomes the way the State party has addressed the Committee's previous recommendations in a separate part of the report. The Committee also welcomes the fruitful and open dialogue between the representatives of the State party and itself.

B. Positive aspects

70. The Committee commends the State party for maintaining a high level of respect for human rights in general and for its obligations under the Convention in particular, as well as for the active role it plays internationally in the fight against torture.

71. The Committee welcomes the recommendation made by the Committee set up by the Ministry of Justice to incorporate three main United Nations human rights treaties, including the Convention, into Danish domestic law.

72. It also notes with satisfaction:

(a) The adoption of the Amendment to the Act on the Administration of Justice, which has greatly tightened the controls over the use of solitary confinement, decreasing its use as well as providing for judicial control over solitary confinement while in remand;

(b) The circulars of the National Commissioner of Police prescribing, inter alia, earlier access by family to detainees, mandatory medical examination of all persons placed in a detention cell, and access to a lawyer and an interpreter without delay;

(c) The adoption of legislation granting a more protective status to asylum seekers;

(d) The efforts made in educational programmes for the police;

(e) The multidisciplinary treatment of persons living in Denmark who have been victims of torture;

(f) The increase in the State party's contribution to the United Nations Voluntary Fund for Victims of Torture and the continued support to national rehabilitation centres for torture victims.

C. Subjects of concern

73. The Committee is concerned about the following:

(a) The lack of a definition of torture, as provided in article 1 of the Convention, in the penal legislation of the State party and the lack of a specific offence of torture punishable by appropriate penalties, as required by article 4, paragraph 2, of the Convention;

(b) The lack of effective recourse procedures against decisions imposing solitary confinement upon persons servicing sentences;

(c) The proposed amendment to the Alien's Act, which may imply that aliens who have been refused a residence permit must leave the country immediately after the rejection of their application. If strictly applied, this will frustrate the effectiveness of article 22 of the Convention.

D. Recommendations

74. The Committee recommends that:

(a) The State party ensure the speedy implementation of the recommendation of the Ad Hoc Committee with regard to incorporating the Convention into Danish domestic law;

(b) Denmark establish adequate penal provisions to make torture as defined in article 1 of the Convention a punishable offence in accordance with article 4, paragraph 2, of the Convention;

(c) The State party continue to monitor the effects of solitary confinement on detainees and the effects of the new bill, which has reduced the number of grounds that can give rise to solitary confinement and its length;

(d) The law governing solitary confinement for convicted prisoners should establish adequate review mechanisms relating to its determination and duration;

(e) The State party ensure that the proposed amendment to the Aliens Act does not frustrate effective recourse by aliens to the Committee as provided in article 22 of the Convention;

(f) The State party widely disseminate the Committee's conclusions and recommendations, in all appropriate languages, in the country.

Luxembourg

75. The Committee considered the combined third and fourth periodic reports of Luxembourg (CAT/C/34/Add.14) at its 514th, 517th and 525th meetings, held on 7, 8 and 15 May 2002 (CAT/C/SR.514, 517 and 525), and adopted the following conclusions and recommendations.

A. Introduction

76. The Committee welcomes the third and fourth periodic reports of Luxembourg, which were combined in a single document following the Committee's recommendation. The report was submitted on time and is in full conformity with the guidelines of the Committee for the preparation of State party periodic reports. The Committee compliments the State party for the excellent quality of its report and welcomes the fruitful and constructive dialogue with the high-level delegation of the State party during its consideration.

B. Positive aspects

77. The Committee commends the State party for maintaining a high level of respect for human rights in general and for its obligations under the Convention in particular.

78. The Committee notes the following positive developments:

(a) That all matters of concern as well as previous recommendations of the Committee have been positively addressed in detail;

(b) That by the Act of 24 April 2000 torture has been incorporated into the Penal Code as a specific crime and an aggravating circumstance of a crime or offence against the person. Furthermore, the definition of torture is broadly based on the definition contained in article 1 of the Convention, and relates both to physical and psychological torture;

(c) The establishment of the Advisory Commission on Human Rights on 26 May 2000;

(d) The Act of 31 May 1999 establishing the Grand Ducal police force and the General Police Inspection Department, whose main objective is the merger of the Police and the Gendarmerie. The Act also criminalizes, inter alia, trafficking in persons;

(e) The Act of 14 May 2000 by which Luxembourg ratified the Rome Statute of the International Criminal Court.

C. Subjects of concern

79. The Committee expresses concern about the following:

(a) That minors ordered to be placed in disciplinary centres are put in adult prisons;

(b) The institution of solitary confinement, particularly as a preventive measure during pre-trial detention.

D. Recommendations

80. The Committee recommends that:

(a) The State party refrain from placing minors in adult prisons for disciplinary purposes;

(b) Solitary confinement be strictly and specifically regulated by law and that judicial supervision be strengthened, so that this punishment is applied only in severe circumstances, with a view to its abolition, particularly during pre-trial detention;

(c) The State party consider making provision for appropriate compensation specifically for victims of torture;

(d) The Committee's conclusions and recommendations be widely disseminated in the State party in all appropriate languages.

Norway

81. The Committee considered the fourth periodic report of Norway (CAT/C/55/Add.4) at its 511th, 514th and 519th meetings, on 6, 7 and 10 May 2002 (CAT/C/SR.511, 514 and 519), and adopted the following conclusions and recommendations.

A. Introduction

82. The Committee welcomes the fourth periodic report of Norway, which was submitted on time and is in full conformity with the guidelines of the Committee for the preparation of State party periodic reports. The Committee compliments the State party for ensuring periodicity of reports in a timely manner and welcomes the fruitful and constructive dialogue with the State party.

B. Positive aspects

83. The Committee commends the State party for maintaining a high level of respect for human rights in general and for the positive record in the implementation of the provisions of the Convention.

84. The Committee notes with satisfaction:

(a) The adoption of a Plan of Action for Human Rights for the period 2000-2004, as part of the follow-up to the 1993 World Conference on Human Rights, indicating, inter alia, measures aiming at the further implementation of the Convention in Norwegian legislation;

(b) The issuance of guidelines on the notification of arrest to relatives and lawyers, as well as concerning the right to access to health care for persons in police custody;

(c) The proposal to incorporate a new provision into the Penal Code that will prohibit and penalize torture, in conformity with article 1 of the Convention;

(d) The proposals made for an amendment to the Criminal Procedure Act to reduce the overall use of solitary confinement and to strengthen its judicial supervision by means of legal regulation and limitation;

(e) The research undertaken to evaluate the quality of investigations carried out by the Special Investigative Bodies;

(f) The regularity and generosity of donations made by the State party to the United Nations Voluntary Fund for Victims of Torture;

(g) The high percentage of women among members of the judiciary, police force and prison staff.

C. Subjects of concern

85. The Committee continues to be concerned about the use of pre-trial solitary confinement.

D. Recommendations

86. The Committee recommends that:

(a) Appropriate legislation introducing the offence of torture into the Norwegian penal system in conformity with article 1 of the Convention be enacted, in accordance with the above-mentioned proposal. It requests that information in this regard be included in the next periodic report of Norway;

(b) Information on steps taken to respond to the Committee's ongoing concern about the use of pre-trial solitary confinement be included in the State party's next periodic report;

(c) Information on the outcome of the proposals for amendments to the Criminal Procedure Act on the issue of solitary confinement be included in the State party's next periodic report;

(d) Information on the proposed amendments to the Alien Act on the basis of Security Council resolution 1373 (2001) on international cooperation to combat threats to international peace and security caused by terrorist acts also be included in Norway's next periodic report;

(e) The Committee's conclusions and recommendations be widely disseminated in the country in all appropriate languages.

Russian Federation

87. The Committee considered the third periodic report of the Russian Federation (CAT/C/34/Add.15) at its 520th, 523rd and 526th meetings, held on 13, 14 and 16 May 2002 (CAT/C/SR.520, 523 and 526), and adopted the following conclusions and recommendations.

A. Introduction

88. The Committee welcomes the third periodic report of the Russian Federation, which was submitted with a delay. The report responds directly to some of the concerns and recommendations expressed by the Committee in its conclusions adopted in 1996. The Committee regrets that despite the State party's assurances that it would promptly provide the Committee with additional information requested in the review, such materials have not been received. The Committee appreciates the updated and detailed information as well as the extensive responses provided by the representatives of the State party in the oral update and reply. The Committee notes, however, that, because of a lack of time, many of the questions asked by the Committee in the review of the third periodic report remained unanswered.

B. Positive aspects

89. The Committee notes the following positive developments:

(a) The ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(b) The introduction of a new Criminal Code and a new Code of Criminal Procedure, as well as the State party's assurances that all of the latter Code will enter into force on 1 July 2002. The Committee welcomes the introduction in the Code of Criminal Procedure, inter alia, jury trials, stricter limits on detention and interrogation, provisions for exclusion of evidence obtained in the absence of a defence lawyer, and the conferral authority of a judge rather than a procurator to order an arrest.

(c) Transfer of the penal correction system from the authority of the Ministry of Internal Affairs to the authority of the Ministry of Justice;

(d) Measures introduced to improve conditions of detention in prisons and to reduce overcrowding;

(e) Assurances by the representative of the State party that alternative service, and a "voluntary military on a contract basis" would be introduced to replace mandatory conscription into the armed forces;

(f) The Procurator General's Order No. 46, which requires the presence of representatives of the Prosecutor's Office during "special operations" carried out in Chechnya, and Order No. 80 of the Commander of the Federal Forces of the North Caucasus, requiring troops to identify themselves, record detentions, notify relatives, and take other measures to safeguard civilians from abuse;

(g) The setting up of a special working group within the Ministry of Internal Affairs with a mandate to bring national legislation into conformity with international refugee law.

C. Factors and difficulties

90. The Committee appreciates the frank explanations provided by the delegation regarding the difficulties still faced by the State party in overcoming the inheritance of a system characterized by "arbitrariness and impunity" and in building and strengthening democratic institutions and the rule of law. It notes that these challenges are compounded by "acts of terrorism" and threats to security. Nonetheless, the Committee reiterates that, in accordance with article 2 of the Convention, "no exceptional circumstance whatsoever ... may be invoked as a justification of torture".

D. Subjects of concern

91. The Committee is deeply concerned over the following:

(a) Numerous and consistent allegations of widespread torture and other cruel, inhuman or degrading treatment or punishment of detainees committed by law enforcement personnel, commonly with a view to obtaining confessions;

(b) Continuing reports, despite the State party's considerable efforts to initiate dialogue and preventive safeguards such as a "hotline" for victims, of widespread "hazing" *(dedovshchina)* in the military, as well as torture and other cruel, inhuman or degrading treatment or punishment in the armed forces, conducted by or with the consent or approval of officers, resulting in severe physical and mental harm to the victims;

(c) A persistent pattern of impunity for torture and other ill-treatment benefiting both civil and military officials, a lack of reported decisions by judges to dismiss or return a case for further investigation citing the use of torture to obtain a confession, and the very small number of persons convicted of violations of the Convention.

92. The Committee also expresses its concern about the following:

(a) The failure to define torture in domestic law in conformity with article 1 of the Convention. The designation of torture as an aggravating circumstance for some enumerated crimes does not satisfy the requirements of articles 1 and 4 of the Convention;

(b) The numerous cases of convictions based on confessions and the law enforcement promotion system based on the percentage of crimes solved, which, taken together, reportedly create conditions that promote the use of torture and ill-treatment to force detainees to "confess";

(c) The lack of adequate access for persons deprived of liberty, immediately after they are apprehended, to counsel, doctor and family members, an all-important safeguard against torture;

(d) The de facto refusal of judges to take account of evidence of torture and ill-treatment provided by the accused, resulting in the common to either investigate or prosecute such cases;

(e) The explanation by the State party that, despite numerous allegations of violence against women in custody, no formal complaint has been received on this issue. Despite the State party's efforts to release prisoners and reduce their number in general, the population of women in custody has doubled in the past decade;

(f) The lack of practical training about obligations under the Convention for doctors, law enforcement personnel and judges, and the military;

(g) Distressing conditions of pre-trial detention, including the prevalence of tuberculosis and other diseases, as well as the poor and unsupervised conditions of detention in IVS (temporary police detention), and SIZOs (pre-trial establishment) facilities, including the practice of placing metal shutters in front of cell windows, preventing natural light and ventilation in the cells, reportedly because, by law, inmates are prohibited from communicating with one another;

(h) The insufficient level of independence and effectiveness of the Procuracy, due, as recognized by the State party, to the problems posed by the dual responsibility of the Procuracy for prosecution and oversight of the proper conduct of investigations;

(i) Reports of conditions amounting to inhuman or degrading treatment, of children in institutions or places of detention;

(j) A lack of safeguards to ensure that persons are not returned to countries where they face a real risk of torture (non-refoulement).

93. The Committee is particularly concerned over the following: in connection with the events in Chechnya:

(a) Numerous, ongoing reports of severe violations of human rights and the Convention, including arbitrary detention, torture and ill-treatment, including forced confessions, extrajudicial killings, and forced disappearances, particularly during "special operations" or "sweeps", and the creation of illegal temporary detention centres, including "filtration camps". Allegations of brutal sexual violence are unusually common. Additionally, armed units which are reported to be very brutal towards civilians have been sent again into the conflict area;

(b) Numerous armed units and forces operating under the authority of various departments and services in Chechnya, which hinder the identification of the personnel responsible for the reported abusive actions cited above;

(c) A lack of effective implementation of Orders Nos. 46 and 80, as referred to above among the positive aspects;

(d) The dual system of jurisdiction in Chechnya involving both military and civilian prosecutors and courts, which leads to long and unacceptable delays in registering cases, resulting in a cyclical process whereby case information and the responsibility for opening investigations continue to be passed from one official to another and back, without resulting in the initiation of prosecutions. The Committee notes with concern that it is impossible for the civil prosecutor to question military personnel and carry out investigations at military sites in order to collect the evidence required to oblige the military prosecutor's office to take up the case. Also of concern is the insufficient independence of military courts, prosecutors and judges, with the result that few cases are registered to prosecute officials alleged to be responsible for the abuses.

E. Recommendations

94. The Committee recommends that the State party:

(a) Promptly incorporate into domestic law the definition of torture as contained in article 1 of the Convention and characterize torture and other cruel, inhuman and degrading treatment as specific crimes with appropriate penalties in domestic law;

(b) Adopt measures to permit detainees access to a lawyer, doctor, and family members from the time they are taken into custody; inform suspects and witnesses of their rights at the beginning of detention; and ensure that legal assistance and a doctor will be provided at the request of detained persons rather than solely when permitted by officials. Urgent consideration should be given to making a medical examination compulsory for persons when they enter IVS and SIZOs, and to the establishment of a health service independent from the Ministries of Internal Affairs and Justice to conduct such examinations;

(c) Ensure in practice absolute respect for the principle of the inadmissibility of evidence obtained by torture and review cases of convictions based solely on confessions, recognizing that many of them may have been obtained through torture or ill-treatment, and, as appropriate, provide compensation to and release persons presenting credible evidence of having been tortured or ill-treated;

(d) Improve conditions in prisons and pre-trial detention centres so that they are in conformity with the requirements of the Convention. The State party should ensure, in particular, that the prohibition of communication between inmates in pre-trial detention is not imposed on all inmates without distinction, but limited to identified inmates, when necessary and on the basis of a court decision setting a time limit for such conditions of detention;

(e) Establish a programme of unannounced inspections of pre-trial detention centres and other places of confinement, by credible impartial investigators, whose findings should be made public;

(f) Consider the creation of an independent body to inspect prisons, monitor all forms of violence in custody, including sexual violence against both men and women, and all forms of inter-prisoner violence, including proxy violence with the acquiescence of officials. The participation of public defenders in the investigation stage following detention would offer a safeguard for detainees;

(g) Ensure training about obligations under the Convention for (i) doctors to detect signs of torture or ill-treatment of persons who have been or are in custody, (ii) law enforcement personnel and judges to initiate prompt and impartial investigations, and (iii) military personnel to be aware of the prohibition of torture and that an order from a superior officer may not be invoked as a justification of torture;

(h) Request the Supreme Court to analyse the existing practices of the admissibility of cases of torture in the courts, in light of the definition of torture provided in article 1 of the Convention, and consider issuing guidelines on this matter;

(i) Ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities and the prosecution and punishment, as appropriate, of perpetrators, as well as the protection of persons who complain of torture and their witnesses from retaliation;

(j) Distribute and ensure implementation of appropriate instructions to all relevant officials on the prohibition of ill-treatment and acts of torture against children in institutions and prisons under the jurisdiction of the State;

(k) Ensure that no person is expelled, returned or extradited to a country where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

95. With regard to the situation in Chechnya, the Committee also recommends that the State party:

(a) Clarify the jurisdiction over the events in Chechnya, which currently have an uncertain status, as there is no state of exception and there is also a non-international armed conflict in progress. Such clarification could provide individuals with an effective means of seeking redress for any violations committed, so they will not be caught in a vicious circle of various military and civilian departments and agencies with differing degrees of responsibility;

(b) While a number of mechanisms have been put in place in Chechnya in connection with allegations of human rights violations, none has possessed the attributes associated with an independent impartial investigating body. Accordingly, the Committee reiterates its 1996 conclusion calling upon the Government of the State party to establish a credible impartial and "independent committee to investigate allegations of breaches of the Convention by the military forces of the Russian Federation and Chechen separatists, with a view to bringing to justice those against whom there is evidence that establishes their involvement or complicity in such acts" (A/52/44, para. 43 (h));

(c) Ensure the effective implementation of Orders Nos. 46 and 80 and elaborate comprehensive guidelines on the conduct of sweep operations;

(d) Strengthen the powers of the Special Representative of the President for human and civil rights and freedoms in Chechnya to conduct investigations and make recommendations to the prosecutor as to possible criminal cases;

(e) Take steps to ensure civilian control over the army and ensure, in practice, that hazing, torture and ill-treatment are prohibited in the military, among conscripts and officers;

(f) Consider the formation of a joint investigative group of both military and civilian procuracy officials until specific responsibility can be identified and jurisdiction can be established.

96. The Committee further recommends that the State party:

(a) Provide requested data to the Committee, including information disaggregated, inter alia, by age, gender, ethnicity and geography, on civil, military and other places of detention as well as on juvenile detention centres and other relevant institutions; and provide information in the next periodic report regarding the number, types and results of cases of punishment of police and other law enforcement personnel for torture and related offences, including those rejected by the court;

(b) Widely disseminate the conclusions and recommendations of the Committee and the summary records of the review, in appropriate languages, in the country; and consider consulting with independent human rights, civil liberties and legal aid organizations and public defenders groups in the preparation of the next report.

Saudi Arabia

97. The Committee considered the initial periodic report of Saudi Arabia (CAT/C/42/Add.2) at its 516th, 519th, 521st and 524th meetings, on 8, 10, 13 and 15 May 2002 (CAT/C/SR.516, 519, 521 and 524), and adopted the following conclusions and recommendations.

A. Introduction

98. The Committee welcomes the submission of the initial report, although it regrets the delay in submission and the paucity of information on the practical enjoyment in Saudi Arabia of the rights conferred by the Convention. It generally conforms to the Committee's reporting guidelines. The Committee also welcomes the opportunity to engage in a dialogue with a large delegation covering many matters arising under the Convention, which was enhanced by the extensive oral report.

B. Positive aspects

99. The Committee welcomes the following:

(a) The State party's accession to the Convention against Torture on 23 September 1997, as well as its accession to several other core human rights treaties and its expressed intention to ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The Committee also welcomes the State party's declaration that its domestic law, including its components based upon Shariah, is capable of giving full recognition to the rights and obligations contained in the Convention;

(b) Legal developments designed to enhance the rule of law and the proper administration of justice that have occurred since the preparation of the report, such as aspects of the newly promulgated Code of Civil Procedure, Code of Criminal Procedure and Code of Practice for Lawyers. The Committee welcomes, in particular, that the Code of Criminal Procedure guarantees every accused person the right to avail himself or herself of the services of a lawyer at all stages of an investigation and trial;

(c) The State party's expression that its domestic law provides that no exceptional circumstances, including superior orders, may be invoked as a defence to a charge of torture, the reassurance that statements obtained by torture are inadmissible in proceedings, and the oral assurance that confessions are revocable at any point of proceedings. The State party's reassurance that corporal punishments are not imposed upon minors was noted;

(d) The competence of the Board of Grievances to hear allegations of violations of human rights, and that certain medical facilities possess appropriate forensic medical expertise for examination of alleged victims of torture. The Committee welcomes the establishment of a standing commission to investigate accusations concerning the subjection of any person to torture or other cruel, inhuman or degrading treatment or punishment during the arrest, detention and investigation of suspects;

(e) The State party's invitation to the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers to examine its law, policy and practice in this field.

C. Subjects of concern

100. The Committee is concerned about the following:

(a) While noting the State party's indication that Shariah expressly prohibits torture and other cruel and inhuman treatment, the State party's domestic law itself does not explicitly reflect this prohibition, nor does it impose criminal sanctions. The Committee considers that express incorporation in the State party's domestic law of the crime of torture, as defined in article 1 of the Convention, is necessary to signal the cardinal importance of this prohibition;

(b) The sentencing to, and imposition of, corporal punishments by judicial and administrative authorities, including, in particular, flogging and amputation of limbs, that are not in conformity with the Convention;

(c) The different regimes applicable, in law and in practice, to nationals and foreigners in relation to their legal rights to be free from, and their ability to complain of, conduct in violation of the Convention. The Committee recalls that the Convention and its protections are applicable to all acts in violation of the Convention that occur within its jurisdiction, from which it follows that all persons are entitled, in equal measure and without discrimination, to the rights contained therein;

(d) Allegations of prolonged pre-trial detention of some individuals beyond the statutory limits prescribed by law, which heightens the risk of, and may on occasion of itself constitute, conduct in violation of the Convention. In this connection, the Committee expresses its concern at instances of denial, at times for extended periods, of consular access to detained foreigners. Moreover, the Committee is concerned at the limited degree of judicial supervision of pre-trial detention;

(e) Reports of incommunicado detention of detained persons, at times for extended periods, particularly during pre-trial investigations. The lack of access to external legal advice and medical assistance, as well as to family members, increases the likelihood that conduct violating the Convention will not be appropriately pursued and punished;

(f) The requirement of article 100 of the statute of the Directorate of Public Security for an investigating officer to endeavour "by judicious means" to ascertain the reasons for an individual's silence. While the article in question formally proscribes resort to torture or coercion, such a requirement unjustifiably heightens the risk of conduct violating the Convention;

(g) Cases of deportation of foreigners that have been drawn to the Committee's attention that seem to have been in breach of the obligations imposed by article 3 of the Convention;

(h) The jurisdiction of the *Mutawe'en* officials to pursue, inter alia, violations of the moral code and to proscribe conduct they identify as not conducive to public morality and safety. The Committee is concerned that the powers of these officials are vaguely defined by law, and that their activities may violate the Convention;

(i) The apparent failure of the State party to provide effective mechanisms to investigate complaints of breaches of the Convention;

(j) While noting the State party's institution of mechanisms for the purpose of providing compensation for conduct in violation of the Convention, as a practical matter, compensation appears to be rarely obtained, and accordingly full enjoyment of the rights guaranteed by the Convention is consequently limited.

D. Recommendations

101. The Committee recommends, in particular, that the State party:

(a) Expressly incorporate within its domestic law a crime of torture in terms that are consistent with article 1 of the Convention;

(b) Re-examine its imposition of corporal punishments, which are in breach of the Convention;

(c) Ensure that its laws are in practice applied to all persons, regardless of nationality, gender, religious affiliation or other distinction, insofar as issues arising under the Convention are concerned;

(d) Ensure that all places of detention or imprisonment conform to standards sufficient to guarantee that no person is thereby subjected to torture or cruel, inhuman or degrading treatment or punishment;

(e) Ensure that its law and practice reflect the obligations imposed by article 3 of the Convention;

(f) Ensure that all persons who have been victims of a violation of their rights under the Convention have access, in law as well as in practice, to the means of obtaining full redress, including compensation, and that the persons who may be responsible for such violations are promptly and impartially investigated, and thereupon punished;

(g) Ensure that its *Mutawe'en* officials exercise a clear and precise jurisdiction, in conformity with the Convention and other applicable rules of non-discrimination, in a manner regulated by law and subject to review by ordinary judicial authority;

(h) Ensure, in practice, that persons detained in custody are able to exercise prompt access to legal and medical expertise of choice, to family members and, in the case of foreign nationals, to consular personnel;

(i) Ensure that the composition of the judiciary fully conforms to the standards imposed by the Basic Principles on the Independence of the Judiciary;

(j) Ensure that its training of law enforcement personnel includes education and information on the recognition of the physical consequences of torture consistent with that provided to a number of its medical personnel, in accordance with article 10 of the Convention;

(k) Adopt adequate measures to permit the creation of independent non-governmental organizations and the development of their activities in the area of the defence of human rights;

(l) Provide data in the next periodic report disaggregated, inter alia, by age, gender, ethnicity, nationality, geography and other status, on persons who are deprived of their liberty in prisons or elsewhere, or who are otherwise sanctioned where they may be vulnerable to acts in breach of the Convention, and the results of any cases of prosecution or sanction of police or other officials for acts prohibited by the Convention;

(m) Consider making the declaration under article 22 of the Convention; and

(n) Widely disseminate the Committee's conclusions and recommendations, in all appropriate languages, in the country.

Sweden

102. The Committee considered the fourth periodic report of Sweden (CAT/C/55/Add.3) at its 504th and 507th meetings, held on 30 April and 1 May 2002 (CAT/C/SR.504 and 507), and adopted the following conclusions and recommendations.

A. Introduction

103. The Committee welcomes with satisfaction the fourth periodic report of Sweden, which was submitted to the Committee before the target date, and was drawn up in keeping with the Committee's guidelines for drafting of reports.

104. The Committee welcomes the additional information supplied by the delegation of Sweden, both orally and in writing, demonstrating the State party's willingness to continue a frank and open dialogue with the Committee. The Committee also underlines the efforts made by the delegation to reply to its questions in an exhaustive manner.

B. Positive aspects

105. The Committee emphasizes with satisfaction the strong and steadfast commitment to human rights manifested by Sweden and the positive responses to the Committee's earlier recommendations. It welcomes in particular the following:

(a) The adoption of a national action plan for human rights for the years 2002-2004, as part of the follow-up to the 1993 World Conference on Human Rights, featuring as a priority topic the issue of international protection against persecution and torture. The Committee welcomes with satisfaction the plan of the Swedish authorities to translate the conclusions and recommendations of the six United Nations treaty monitoring bodies and to distribute them in municipalities;

(b) The setting up, in December 2000, of a special commission to study the manner in which the criminal investigation into the 1995 death in detention of Osmo Vallo was carried out. The Committee notes in particular that the "Osmo Vallo Commission" published its conclusions and recommendations in April 2002, and that they have been submitted to the Ministry of Justice;

(c) The establishment, in December 2000, of an official parliamentary committee to determine whether the existing framework for handling allegations of criminal actions by the police is satisfactory;

(d) The establishment of an official committee entrusted with the task of investigating the actions of the police during the events in Göteborg, and determining what steps the police should take on the occasion of public demonstrations to protect public order as well as the fundamental right to demonstrate;

(e) The setting up of a special commission to review legislation and case law relating to the application of decisions concerning expulsion from Swedish territory, especially in relation to allegations that individuals have been expelled to countries with which they have no significant ties;

(f) The many studies and projects under way aimed at enhancing the domestic legal system for the protection of human rights, in particular the jurisdiction of Swedish courts regarding international offences committed abroad, and the improvement of the procedure relating to requests for asylum;

(g) The assurance given by the Swedish authorities that they have acted in accordance with the Committee's observations concerning individual complaints and the State party's obligation not to send certain persons back to countries where there is a risk that they might be tortured. The Committee also welcomes the fact that the Alien Act contains a provision which will enable the Swedish immigration authorities to base their decisions directly on observations made by international bodies.

C. Subjects of concern

106. While the specific arrangements for giving effect to the Convention in the domestic legal system are left to the discretion of each State party, the means used must be appropriate, that is, they should produce results which indicate that the State party has fully discharged its obligations. Sweden has opted for the dualistic system as regards incorporation of international treaties into domestic law, and should therefore adopt appropriate legislation for the incorporation of the Convention against Torture. The Committee notes that Swedish domestic

law does not contain a definition of torture in keeping with article 1 of the Convention. Above all, neither torture nor cruel, inhuman and degrading treatment are identified as specific crimes and offences in domestic criminal law.

107. The Committee also records its concern at the following:

(a) The allegation that some foreigners have been expelled or sent back to a country with which they have no significant ties, on the basis, inter alia, of linguistic criteria which are sometimes unsystematic, unreliable, and could lead to a breach of article 3 of the Convention;

(b) The Special Control of Foreigners Act, known as the anti-terrorism law, allows foreigners suspected of terrorism to be expelled under a procedure which might not be in keeping with the Convention, because there is no provision for appeal;

(c) Several cases of the excessive use of force by police personnel and prison guards, leading to the death of the persons concerned, have occurred in recent years in Sweden. In addition, the year 2001 was marked by the Göteborg riots, following which many complaints of ill-treatment were made;

(d) Allegations of imprecise, often subjective and inadequate guidelines and lack of training given to police personnel and prison guards regarding the use of force;

(e) Although the periodic report claims that statements obtained under duress cannot be used as evidence in proceedings, there seems to be no legislative rule which clearly spells out such a prohibition.

D. Recommendations

108. The Committee recommends that the State party should:

(a) Incorporate in its domestic law the definition of torture set out in article 1 of the Convention, and should characterize acts of torture and cruel, inhuman and degrading treatment as specific crimes, punishable by appropriate sanctions;

(b) Ensure that if foreigners are sent back, they are expelled to a country of their choice, or a country with which they have real ties and where there is no substantial ground for believing that they would be in danger of being subjected to torture;

(c) Bring the Special Control of Foreigners Act into line with the Convention;

(d) Strengthen the machinery for following up the guarantees of proper treatment offered by States to which foreigners are expelled;

(e) Undertake more comprehensive and detailed investigations into the human rights situation in the countries of origin of asylum-seekers;

(f) Ensure that all allegations of violations committed by police personnel and prison guards, and in particular any death in detention, are investigated promptly and impartially. Due attention should be paid to the conclusions and recommendations of the "Osmo Vallo Commission";

(g) Strengthen the human rights education programmes intended for police personnel, prison guards and other law enforcement officers, as well as training programmes relating to the application of the *Handbook of Police Procedures and Actions of Self-Defence*;

(h) Ensure that the prohibition on the use of statements obtained by torture as evidence in proceedings is clearly formulated in domestic law.

109. The Committee recommends that the State party include in its fifth periodic report a summary of the conclusions and recommendations drawn up by the above-mentioned national commissions and committees, and indicate how they have been followed up.

110. The Committee also recommends that the State party disseminate widely the Committee's conclusions and recommendations, in all appropriate languages, in the country.

Uzbekistan

111. The Committee considered the second periodic report of Uzbekistan (CAT/C/53/Add.1) at its 506th, 509th and 518th meetings, held on 1, 2 and 8 May 2002 (CAT/C/SR.506, 509 and 518), and adopted the following conclusions and recommendations.

A. Introduction

112. The Committee welcomes the second report of Uzbekistan, which was submitted on time and in accordance with the Committee's previous request. It appreciates the substantial information on the many reforms aimed at bringing domestic legislation into harmony with the State party's obligations under the Convention. While noting that there was little information in the report on the implementation of the Convention in practice, the Committee wishes to express its appreciation for the informative oral update given by the representatives of the State party during the consideration of the report, and the State party's willingness to provide further information and relevant statistics in writing.

B. Positive aspects

113. The Committee notes the following positive developments:

(a) The ratification of several significant human rights treaties and the enactment of many laws aimed at bringing the legislation into conformity with the obligations in those treaties;

(b) Educational initiatives taken by the State party to familiarize various sectors with international human rights standards, and the extensive efforts made to cooperate with international organizations to promote understanding of human rights, including by inviting technical cooperation from the Office of the High Commissioner for Human Rights;

(c) The State party's reports of its efforts to draw up a new definition of torture that is consistent with the definition in article 1 of the Convention, and the introduction of a draft law in the parliament to allow citizen's complaints in matters of torture;

(d) Assurances from the representative of the State party that the State is determined to establish an independent judiciary;

(e) The report by the representative of the State party of the establishment of an appeals system for court sentences and the introduction of alternatives to prison sentences, releasing detainees on bail;

(f) The information conveyed by the State party's representative that responses were being developed to the findings of an official study into complaints filed with the Ombudsman's Office that had revealed a number of questionable judicial convictions, incidents of torture or ill-treatment by law enforcement officials, and inadequate supervision of the application of human rights norms by law enforcement agencies;

(g) The prosecution and sentencing in January 2002 of four police officials to prison terms for torture, and the statement by the State party's representative that this was a turning point signalling the State party's commitment to enforce the prohibition against torture in practice.

C. Factors and difficulties impeding the application of the Convention

114. The Committee is aware of the difficulty of overcoming the inheritance of a totalitarian system in the transition towards a democratic form of governance, and that this is compounded by instability in the region. Nonetheless, the Committee stresses that such circumstances cannot be invoked as a justification of torture.

D. Subjects of concern

115. The Committee expresses concern about the following:

(a) The particularly numerous, ongoing and consistent allegations of particularly brutal acts of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel;

(b) The lack of adequate access for persons deprived of liberty, immediately after they are apprehended, to independent counsel, a doctor or medical examiner and family members, an important safeguard against torture;

(c) The insufficient level of independence and effectiveness of the procuracy, in particular as the Procurator has the competence to exercise oversight on the appropriateness of the duration of pre-trial detention, which can be extended up to 12 months;

(d) A lack of practical training for (i) doctors in the detection of signs of torture or ill-treatment of persons who have been or are in custody, and (ii) law enforcement personnel and judges in initiating prompt and impartial investigations;

(e) The insufficient independence of the judiciary;

(f) The de facto refusal of judges to take account of evidence of torture and ill-treatment provided by the accused, so that there are neither investigations nor prosecutions;

(g) The fact that the definition of torture in the Criminal Code of the State party is incomplete and, therefore, not in full conformity with article 1 of the Convention;

(h) The numerous cases of convictions based on confessions, and the continued use of the criterion of "solved crimes" as the basis for promotion of law enforcement personnel, which, taken together, create conditions that promote the use of torture and ill-treatment to force detainees to "confess";

(i) The absence of transparency in the criminal justice system and the lack of publicly available statistics on detainees, complaints about torture, and the number and results of investigations into such complaints; moreover, the State party has not provided the information requested in connection with the initial report reviewed in November 1999 regarding the number of persons detained and the number executed after being sentenced to death;

(j) The extradition or expulsion of individuals, including those seeking asylum in Uzbekistan, to countries where they may be exposed to the risk of torture.

E. Recommendations

116. The Committee recommends that the State party:

(a) Proceed promptly with plans to review the proposals to amend its domestic penal law to include the crime of torture fully consistent with the definition contained in article 1 of the Convention and supported by an adequate penalty;

(b) Take urgent and effective steps: (i) to establish a fully independent complaints mechanism, outside the procuracy, for persons who are held in official custody; and (ii) to ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities, and the prosecution and punishment, as appropriate, of perpetrators;

(c) Ensure that those who complain of torture and their witnesses are protected from retaliation;

(d) Ensure in practice absolute respect for the principle of the inadmissibility of evidence obtained by torture;

(e) Take measures to establish and ensure the independence of the judiciary in the performance of their duties in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary;

(f) Adopt measures to permit detainees access to a lawyer, a doctor and family members from the time they are taken into custody and ensure that doctors will be provided at the request of detained persons without the need to obtain the permission of prison officials; and maintain a register with the names of all detainees, the times at which such notifications of lawyers, doctors and family members have taken place and the results of medical examinations; this register should be accessible to the lawyers and others as appropriate;

(g) Improve conditions in prisons and pre-trial detention centres, and establish a system allowing for unannounced inspections of those places by credible impartial investigators, whose findings should be made public. The State party should also take steps to shorten the current pre-trial detention period and provide independent judicial oversight of the period and conditions of pre-trial detention. Furthermore, the order for an arrest should be made only by a court;

(h) Ensure that law enforcement, judicial, medical and other personnel who are involved in custody, interrogation, treatment or who otherwise come into contact with detainees are trained with regard to the prohibition of torture and that the requalification procedure ("re-attestation") of those personnel include both verification of an awareness of the Convention's requirements and a review of their records in treating detainees;

(i) Consider further steps to transfer the prison system from the Ministry of Internal Affairs to the Ministry of Justice, thereby advancing the conditions of the penitentiary system in accordance with the Convention;

(j) Review cases of convictions based solely on confessions in the period since Uzbekistan became a party to the Convention, recognizing that many of these may have been based upon evidence obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures;

(k) Ensure in the legislation and in practice that no one will be expelled, returned or extradited to a State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture;

(l) Consider making the declarations under articles 21 and 22 of the Convention;

(m) Provide data in the next periodic report, disaggregated, inter alia, by age, gender, ethnicity and geography, on civil and military places of detention as well as on juvenile detention centres and other institutions where individuals may be vulnerable to torture or ill-treatment under the Convention; provide information in the next periodic report regarding the number, types and results of cases, both disciplinary and criminal, of police and other law enforcement personnel accused of torture and related offences;

(n) Widely disseminate the Committee's conclusions and recommendations and the summary records of the review of the State party's reports, including to law enforcement officials, in the public media and through popularization efforts by non-governmental organizations;

(o) Consider consulting directly with independent non-governmental human rights organizations in the preparation of the next periodic report.

IV. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

A. General information

117. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

118. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

119. The Committee's work under article 20 of the Convention continued during the period under review.

120. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed.

121. However, in accordance with article 20, paragraph 5, of the Convention, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly.

122. Such a summary account is herewith provided in connection with Sri Lanka.

B. Summary account of the results of the proceedings concerning the inquiry on Sri Lanka

1. Introduction

123. Sri Lanka acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 3 January 1994. At the time of accession it did not declare that it did not recognize the competence of the Committee provided for in article 20 of the Convention. The possibility of making such a declaration is provided for in article 28, paragraph 1, of the Convention. The procedure under article 20 is therefore applicable to Sri Lanka.

124. The confidential inquiry provided for in article 20 began in April 1999 and ended in May 2002. In accordance with article 20, paragraph 5, of the Convention, the Committee, after holding consultations with the State party concerned decided, at its twenty-eighth session, to include in its annual report to the General Assembly in 2002 the following summary of the results of the inquiry on Sri Lanka.

2. Development of the procedure

125. On 21 July 1998, five non-governmental organizations based in London, namely, the British Refugee Council, the Medical Foundation for the Care of Victims of Torture, the Refugee Legal Centre, the Immigration Law Practitioners Association and the Refugee Legal Group, submitted information on alleged systematic practice of torture in Sri Lanka to the Committee.

126. The Committee examined the information received at its twenty-first session in November 1998. It concluded that the information was reliable and that it contained well-founded indications that torture was being systematically practised in the territory of Sri Lanka. In accordance with article 20, paragraph 1, of the Convention and rule 76 of its rules of procedure, the Committee decided to invite Sri Lanka to cooperate in its examination of the information and to submit observations in that regard by 1 February 1999. The Government of Sri Lanka submitted its observations on the date set by the Committee.

127. At its twenty-second session, from 26 April to 14 May 1999, the Committee, after having examined the observations made by the State party, reaffirmed that the information available to it provided well-founded indications that torture was being systematically practised in Sri Lanka. Accordingly, it decided to undertake an inquiry and to designate for that purpose Mr. Mavrommatis and Mr. Yu Mengjia. In communicating its decision, the Committee also requested the Government of Sri Lanka to agree to a visit of the two Committee members designated for the inquiry by January 2000.

128. The Government confirmed its acceptance of the visit but requested a postponement due to the heavy schedule of work of the political and military authorities caused by the aggravation of the internal conflict opposing the Sri Lankan armed forces and the members of the Liberation Tigers of Tamil Eelam (LTTE) in the northern and eastern parts of the country.

129. The visit finally took place from 19 August to 1 September 2000. The members of the Committee concentrated their activities in Colombo, but also travelled to Kandy, Matale, Dambulla, Panadura and Kalutara in order to visit detention places. However, for security reasons they were not able to visit the northern and eastern parts of Sri Lanka where the armed conflict raged and where many allegations of torture had been reported. During the visit, Mr. Mavrommatis and Mr. Yu Mengjia held 12 meetings with government officials and visited 16 places of detention. The Government gave full support to the visit and was cooperative at all times.

130. Very useful meetings were held with locally based senior officials of the United Nations system who assisted the Committee in understanding the context and background within which allegations of torture could be examined. The two Committee members also held numerous meetings with non-governmental organizations, lawyers and medical doctors dealing with cases of torture. Interviews with alleged torture victims were also conducted.

131. Initial observations and recommendations were made by the Committee members at the wrap-up meeting held with government officials on 31 August 2000. On 6 November 2000 the State party provided a reply concerning the implementation of the initial recommendations.

132. The two members reported on their visit to the Committee at its twenty-fifth session (13-24 November 2000). The Committee unanimously expressed satisfaction with the manner in which Sri Lanka had so far cooperated in the inquiry and endorsed the suggestions made by the members conducting the inquiry that: (a) it would be premature to make a final assessment and to transmit the conclusions of the inquiry at that stage; and (b) it would be more productive to continue the cooperation between the Committee and the Government of Sri Lanka within the framework of the inquiry so as to encourage the Government to take concrete measures to achieve full respect of its obligations under the Convention.

133. In this context, by letter dated 24 November 2000 the preliminary recommendations that the Committee addressed to the Government to assist it in its efforts to improve the implementation of the Convention were transmitted, and the Government was requested to inform the Committee of the action undertaken with regard to those recommendations. The Government provided detailed information concerning the implementation of the preliminary recommendations by communications dated 28 March 2001, 27 April 2001 and 8 November 2001.

134. On 7 September 2001, non-governmental organizations transmitted updated information to the Committee concerning cases of torture, ill-treatment, sexual harassment, rape and deaths in custody in Sri Lanka.

135. During its twenty-seventh session (12-23 November 2001), the Committee decided to transmit the findings of the inquiry to the Government and invite it to inform the Committee by February 2002 of the measures taken with regard to those findings. On 11 March 2002 the Government of Sri Lanka provided its comments on the findings of the Committee.

3. Preliminary recommendations made by the Committee

136. The Committee made the following preliminary recommendations to the Government: the State party should undertake to:

(a) Adopt precise instructions to be addressed to its agents to avoid the lack of practical effectiveness of legal, administrative and other measures adopted to combat torture;

(b) Reduce and eventually suppress the many overlapping jurisdictions between agencies investigating offences under the Prevention of Terrorism Act and the Emergency Regulations, and establish clear spheres of competence, conducive to enhancing efficiency in preventing torture in all its forms;

(c) Introduce, under the Prevention of Terrorism Act and the Emergency Regulations, a provision requiring suspects to be produced before a judge within a short time;

(d) Abolish the power of the Secretary of Defence to order preventive detention for a period of up to a year without judicial review;

(e) Develop a central register for detainees in all parts of the country;

(f) Establish an effective mechanism for the criminal prosecution of public officials who commit acts of torture;

(g) Guarantee the access of counsel to detainees in police custody;

(h) Establish a legal assistance scheme free of charge to the beneficiaries;

(i) Establish a mechanism for regular monitoring visits to detention places to be made by magistrates;

(j) Put an end to the illegal detention of suspects by para-military groups assisting the Sri Lankan armed forces in the war against the LTTE and bring groups such as PLOTE and TELO under the strict control of the State, or disband them;

(k) Initiate prompt and independent investigations of every instance of alleged torture;

(l) Grant the Attorney-General authority to initiate investigations into such allegations;

(m) Establish an effective methodology for ensuring that directives relating to the prevention of torture are strictly complied with;

(n) Establish a roster of or select officers qualified to act as officers in charge of all police stations and/or prison facilities, and conduct regular on-the-job awareness courses;

(o) Improve detention conditions in keeping with the United Nations Standard Minimum Rules and Basic Principles for the Treatment of Prisoners;

(p) Conduct the evaluations and studies referred to in the Government's note of 6 November 2000 in a timely manner and report to the Committee on the results.

4. Information received from the Government of Sri Lanka after the conclusion of the visit

137. As mentioned above, by communications dated 8 November, 27 April and 28 March 2001, the Government of Sri Lanka provided detailed information to the Committee concerning its findings and recommendations.

138. The Government informed the Committee that on 20 November 2000 a Permanent Inter-Ministerial Standing Committee on Human Rights Issues was established to consider issues and incidents relating to human rights, in particular the prohibition against torture, and to take policy decisions in this regard. An Inter-Ministerial Working Group on Human Rights Issues was later established to monitor the implementation of decisions taken by the Permanent Inter-Ministerial Standing Committee and to take action on urgent issues. The Working Group took up for consideration the 16 preliminary recommendations transmitted by the Committee against Torture on 24 November to the Government of Sri Lanka. According to the communications received from the Government, multiple positive actions have been taken with a view to prohibiting torture.

Recommendation (a)

139. The Government indicated that in January 2001 the Inspector General of Police convened a special meeting of all Deputy Inspectors General of Police and sensitized them as to the prevailing allegations of torture. Reference was made to the Committee's inquiry mission and to its initial observations. It was emphasized that all Deputy Inspectors General of Police would have to ensure that under no circumstances would torture take place within their respective jurisdictions. Further, they should take prompt and impartial action whenever a complaint or information is received alleging perpetration of torture.

140. On 14 January 2001 the Inspector General of Police sent an official circular to all officers in charge of Police Divisions and Specialized Divisions reiterating that under no circumstances should torture be perpetrated or permitted. According to the Government, by the end of February 2001, all police officers attached to the Sri Lanka Police Department had received specific instructions on the need to desist totally from any form of torture.

141. The Government of Sri Lanka further informed the Committee that according to the policy of the Ministry of Defence only authorized personnel of the police and the security forces should participate in the arrest, detention and interview of suspects. No other persons or members of groups should under any circumstances be involved in the conduct of such law enforcement activity. The Ministry of Defence closely monitors the directive proscribing the participation of members of ex-militant groups in de facto law enforcement efforts. Members of ex-militant groups have been totally debarred from effecting any arrests or detention of persons.

Recommendation (b)

142. According to the Government, all police officers are legally entitled and empowered to conduct criminal investigations into offences recognized in the Prevention of Terrorism Act and the Emergency Regulations. Given the prevailing situation, it would be contrary to the interests of the country and its security to confer the powers under the Prevention of Terrorism Act and the Emergency Regulations solely upon a particular specialized agency of the police. The possible overlapping of jurisdictions has been acknowledged by the Government.

143. The Government reply provides an explanation with regard to the arrest and detention of suspects under the Prevention of Terrorism Act and the Emergency Regulations.

144. Any duly authorized police officer may, in accordance with the law, effect the arrest of a suspect under the relevant provisions of the Prevention of Terrorism Act or the Emergency Regulations. Detention shall be at the police station to which the police officer in question is attached. If the suspect is arrested in the area of his domicile, he would be detained at the police station of that area. However, since the Terrorism Investigation Division (TID) has jurisdiction to conduct anti-terrorism investigations in any part of the country, if the arrest is effected by a police officer attached to the TID the suspect shall be detained at the detention facilities of the TID in Colombo.

145. Following an arrest by a police officer, if the officer in charge of the police station concludes that an investigation needs to be conducted and continued detention is required, he/she shall bring such matter to the attention of the officer in charge of the relevant police division and cause the transfer of investigation or detention to the TID or the Counter-Subversive Unit (CSU). Except for exceptional circumstances, a suspect arrested and detained under the provisions of the Prevention of Terrorism Act or the Emergency Regulations shall not be detained at a police station for more than 72 hours.

146. If the suspect has been arrested under the provisions of the Prevention of Terrorism Act or the Emergency Regulations by a police officer attached to the CSU, unless transferred to the TID the suspect shall be detained until produced before a magistrate at the relevant CSU.

147. In cases where the Criminal Investigation Department (CID) is authorized to commence and conduct a particular investigation relating to an offence under the Prevention of Terrorism Act or Emergency Regulations, the suspect shall be detained in the detention facilities of the CID until produced before a magistrate.

148. All suspects arrested by police officers attached to the TID shall be detained at the detention facilities of that Division.

Recommendation (c)

149. In its initial communication, dated 28 March 2001, the Government explained to the Committee that the Emergency Regulations require the relevant law enforcement authority to produce persons arrested under that law before a magistrate within 30 days from the arrest. According to the Government, following discussions at the Inter-Ministerial Working Group on Human Rights Issues it was decided to amend the relevant regulation and to require suspects to be produced before magistrates within 14 days.

150. By communication dated 27 April 2001, the Government further informed the Committee that by order dated 6 April 2001, the President, acting under section 5 of the Public Security Ordinance, decreed "where any person has been arrested and detained under the provisions of regulation 18 of [the Emergency] Regulations, such person shall be produced before a magistrate within a reasonable time, having regard to the circumstances of each case, and in any event, not later than 14 days from the date of such arrest".

151. According to the Prevention of Terrorism Act, upon the arrest of a suspect under the Act, unless the suspect is detained upon the authority of a detention order issued under section 9 (1) of the Act, such suspect shall be produced before a magistrate within 72 hours. If, however, the suspect is detained under the authority of a detention order issued under section 9 (1) of the Act, such suspect shall be produced before a magistrate as soon as the investigation against the relevant suspect is concluded (a maximum period of 18 months).

Recommendation (d)

152. According to the Government, the authority conferred on the Secretary to the Ministry of Defence to authorize preventive detention is subject to judicial review during the entire period of detention. However, due to the current situation in Sri Lanka, the Government does not deem it suitable to repeal the relevant regulation.

Recommendation (e)

153. The Government informed the Committee that the Police Department has established a computerized Central Police Registry. This registry contains accurate and up-to-date information relating to the arrest and detention of persons under the provisions of the Prevention of Terrorism Act and Emergency Regulations that may be proclaimed by the President of Sri Lanka. Police officers effecting the arrest of suspects under the provisions of those laws are required to inform the Registry no later than six hours from the time of arrest. The Registry became operational on 1 November 2001. The general public has been informed of the establishment of the Central Police Registry and may make inquiries and obtain information in any of the three official languages (Sinhala, Tamil or English). Family members of persons believed to have been arrested may, by contacting the Registry, obtain information regarding whether in fact such a person has been arrested, the identity of the arresting authority and the place of detention.

Recommendations (f), (g) and (h)

154. According to the Government, various sources of information can give rise to the conduct of criminal investigations and domestic inquiries, such as direct complaints of torture made by victims or communications received from United Nations mechanisms. If such information is received by a State agency other than the Attorney-General's Department, such information should initially be forwarded to the Prosecution of Torture Perpetrators Unit of the Department which will register the case.

155. Investigations are conducted by a special team of police officers attached to the CID. However, if an allegation is made against officers of the CID, provision has been made for the investigation to be conducted by a team of police officers attached to Police Headquarters. Following the completion of investigations, Notes of Investigation are forwarded to the Prosecution of Torture Perpetrators Unit, which decides whether to institute criminal proceedings under the provisions of the Convention against Torture Act of 1994. In the event of a decision to institute criminal proceedings, an Indictment is issued against the accused to the relevant high court. Parallel to the institution of criminal proceedings, advice is forwarded by the Attorney-General to the relevant disciplinary authority, inviting it to consider the institution of disciplinary proceedings. The Unit maintains a computerized database of all actions it has taken, including regarding allegations of torture.

Recommendation (i)

156. According to the information provided by the Government, the Police Department has no objection to counsel representing suspects detained at police stations, or interviewing/advising them prior to their being produced before a magistrate. However, due to the need to ensure that police investigators are able to conduct the initial investigation and interview suspects in an unhindered manner, such interviews shall not take place prior to the recording of the statement of the suspect. Nevertheless, the suspect or his/her attorney can make a complaint of assault by police to the magistrate at the time of the initial appearance before the magistrate. Attorneys at law representing arrested suspects have the right to interview the officer in charge of the relevant police station any time after the arrest.

Recommendation (j)

157. It was indicated that there are two Government-sponsored legal aid schemes implemented by the Prisoners Welfare Association and the Community Based Legal Services Project, aimed at providing free legal aid to suspects. In addition, there are several other legal aid schemes implemented by NGOs. The Human Rights Commission of Sri Lanka has identified 34 non-governmental organizations offering such legal aid.

Recommendation (k)

158. In its initial communication dated 28 March 2001 the Government of Sri Lanka informed the Committee that all magistrates are legally empowered to visit and inspect remand prisons where suspects being held on remand (on judicial orders made by magistrates) are being detained. The Committee was further informed that following discussions at the Inter-Ministerial Working Group on Human Rights, it was decided to amend the existing provisions of the Emergency Regulations empowering magistrates to visit (without prior notice) and inspect all places wherein suspects are being detained under the provisions of the Emergency Regulations.

159. By communication dated 27 April 2001, the Government further informed the Committee that by order dated 6 April 2001 the President, acting under section 5 of the Public Security Ordinance, decreed that "the officer in charge of any place authorized by the Inspector General of Police as a place authorized for detention for the purpose of regulation 17 or 18, shall furnish, to the magistrate within the local limits of whose jurisdiction such place of detention is located, once in every 14 days, a list containing the names of all persons detained at such place. The magistrate shall cause such list to be displayed on the notice board of the Court. The magistrate within whose jurisdiction any such authorized place of detention is situated, shall visit such place of detention at least once in every month. It shall be the duty of the officer in charge of that place to secure that every person detained therein, otherwise than by an order of a magistrate, be produced before such visiting magistrate".

160. Following the lapse of the Emergency Regulations, the regulatory power conferred on magistrates on 6 April 2001 to conduct unannounced visits to places of detention under the Emergency Regulations ceased. However, following a recommendation by the Inter-Ministerial Working Group on Human Rights on the need to empower magistrates to visit and inspect all places of detention and interview suspects, the Ministry of Justice is considering incorporating a new provision in the Code of Criminal Procedure that would enable magistrates to perform this function in relation to all suspects arrested under the various applicable laws.

Recommendation (l)

161. According to the Government, all ex-militant groups have been warned of the need to adhere to the law and desist from arresting or detaining any person. In the event of such action being taken, it would be deemed in violations of the penal law and action would be taken in accordance with the law.

Recommendation (m)

162. By an initial communication dated 28 March 2001 the Government of Sri Lanka explained that a Senior Deputy Inspector General of Police has been assigned the task of coordinating all efforts relating to the protection and promotion of human rights and the enforcement of the domestic laws relating to alleged violations of human rights. It is the duty of the Senior Deputy Inspector General of Police to ensure that directives relating to the prevention of torture are strictly complied with.

163. In addition, the Commander of the Sri Lanka Army has appointed a brigadier to coordinate all matters relating to human rights. It is the duty of the brigadier to ensure strict compliance with directives issued to the Sri Lanka Army. Similarly, the Sri Lanka Navy has appointed a commodore to perform such functions.

164. By communication dated 27 April 2001, the Government further informed the Committee that the Deputy Inspector General of Police has recently undertaken an initiative to, inter alia, review the implementation of the State policy and in particular to examine whether persons detained at police stations are treated in accordance with internationally accepted norms and standards and whether they are subjected to any form of torture or other cruel, inhuman or degrading treatment or punishment.

165. The Senior Deputy Inspector General of Police in charge of human rights issues continues personally to monitor compliance with directives issued by the Inspector General of Police and Police Headquarters. These directives are aimed at ensuring the protection of the human rights of suspects arrested and detained in police custody. In order to ensure compliance with such directives, the said officer conducts unannounced visits to police stations.

Recommendation (n)

166. All officers in charge of police stations receive training at the time of their selection and periodically thereafter. The Secretary to the Ministry of Defence invited the Sri Lanka Foundation Institute to undertake a comprehensive study of all training syllabuses of the police and security forces relating to human rights with a view to redesigning the course content and process with the primary objective of bringing about, in addition to an increase in knowledge, a change in attitudes that would contribute towards a change in behaviour. The Sri Lanka Foundation Institute has already commenced a new training programme on human rights for police officers.

Recommendation (o)

167. The process of improving detention centres requires considerable resources and vast improvement in infrastructure. The development and improvement of detention conditions will be a gradual and time-consuming process.

Recommendation (p)

168. The Permanent Inter-Ministerial Standing Committee and the Inter-Ministerial Working Group on Human Rights Issues will continue to monitor the situation relating to torture. The Working Group will take all steps necessary for the prevention of torture and enforcement of the due process of law with regard to all allegations of torture.

169. In addition to providing specific replies to the recommendations made by the Committee in its communication dated 28 March 2001, the Government provided information on additional activities undertaken: video recording of confessions made by suspects to assistant superintendents of police, recorded under the provisions of the Prevention of Terrorism Act and the Emergency Regulations; creation of additional detention facilities at the TID with a view to

easing the overcrowding of the existing detention facilities on the sixth floor of the new secretariat building; and identification and formulation of legal methods of criminal investigation aimed at eliciting self-incriminatory material.

170. In its communication dated 27 April 2001, the Government of Sri Lanka informed the Committee that a process had been initiated by the Ministry of Defence to invite the attention of the relevant disciplinary authorities to consider taking disciplinary action against police officers and security forces personnel alleged to have perpetrated torture. Consideration of disciplinary action in relation to cases determined by the Supreme Court and cases brought to the attention of the Government of Sri Lanka by the United Nations Special Rapporteur on torture is continuing.

171. In addition, the Government also provided statistics indicating the number of persons arrested by law enforcement authorities under the provisions of the Prevention of Terrorism Act, the Emergency Regulations and the normal laws. This information was submitted because the Government believes that the Committee should consider that torture is practised systematically in the territory of a State party only if incidents of torture consistently occur in the process commencing with arrest and ending upon the termination of detention or completion of the penal sanctions as enforced by the administration of justice system or other similar de jure or de facto process.

5. Findings and conclusions of the Committee against Torture

172. In November 2001, the Committee transmitted the following findings and conclusions to the Government of Sri Lanka. The findings of the Committee, which are based mostly on what the members conducting the inquiry observed during their visit to Sri Lanka, are as follows.

173. The most serious problem faced by Sri Lanka is the internal conflict that has been going on for years and which creates a climate of violence, in particular in the northern and eastern part of the country, and is aggravated by terrorist acts perpetrated in urban areas by the LTTE.

174. The Government has taken and continues to take draconian measures to put an end to the internal conflict. These measures include resorting to emergency regulations which go far beyond the ordinary emergency legislation.

175. The Government employs not only the police and its armed forces in combating terrorism but also paramilitary groups, some of which include Tamil defectors. These groups are not fully under the control of civilian or military authorities.

176. Torture is frequently resorted to in the following cases:

(a) By the police, especially during the first days following arrest and detention of suspects;

(b) By the army in respect of captured suspected terrorists, in order to "facilitate" follow-up operations and before handing them over to the civilian authorities; and

(c) By paramilitaries, who apparently are not a regular force fully responsible to the military command.

177. Even though the number of instances of torture is rather high, the majority of suspects are not tortured; some may be treated roughly.

178. The Government does not condone torture and is employing various means to prevent it. It appears that instructions to that effect are not always obeyed, and there was no appropriate follow-up to ensure compliance.

179. Investigation by the Sri Lankan police of alleged instances of torture is not satisfactory, as it has been often inordinately delayed. Prosecution or disciplinary proceedings have until recently been rare.

180. Noteworthy remedial action is that taken by the High Court in respect of fundamental rights petitions. Mention may also be made of the work of the Human Rights Commission. The work, though recently improved, still leaves a lot to be desired, particularly in ensuring compliance with instructions to prevent torture and dealing with the possible effect of new emergency legislation on human rights.

181. On the basis of the above, the Committee has reached the conclusion that, although a disturbing number of cases of torture and ill-treatment as defined by articles 1 and 16 of the Convention are taking place, mainly in connection with the internal conflict, its practice is not systematic.

182. In reaching this conclusion, the Committee has taken into account its views with regard to the meaning of "systematic practice of torture" expressed at the end of its first inquiry under article 20 of the Convention in 1993 and endorsed in subsequent inquiries (A/48/44/Add.1, para. 39; A/51/44, para. 214; and A/56/44, para. 163).[1] These describe the ordinary meaning to be ascribed to the term "systematic" in the context of its use in article 20 of the Convention as required by article 31 of the Vienna Convention on the Law of Treaties of 1969.

183. The Committee also took into consideration the fact that the Government and the government security forces began implementing most of the recommendations addressed to the State party by the Committee.

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[1] "The Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice."

184. Needless to say, it is the duty of the Government to put an end to any act of torture or ill-treatment, to examine independently all allegations of torture and violations of article 16, to prosecute suspects and compensate the victims, and to comply fully with all the recommendations made by the Committee. In particular, the Committee welcomes the measures taken by the Government to bring the paramilitary groups under control, as they are reported to be responsible for many torture cases. It is the view of the Committee that these groups should be disbanded as a measure to prevent any possible systematic occurrence of torture.

185. The Committee, whilst welcoming the setting up of the Inter-Ministerial Standing Committee and the Inter-Ministerial Working Group on Human Rights Issues as a very important step in the right direction, calls on the Government of Sri Lanka to ensure their continued effectiveness.

6. Further information provided by the Government of Sri Lanka

186. By communication dated 11 March 2002, the Government of Sri Lanka provided a reply to the findings and conclusions of the Committee. Some of the information provided has been reflected above, as it refers to further developments related to the recommendations made by the Committee.

187. According to the reply, the Government, through the Sri Lanka Foundation Institute, the Police Higher Training Institute and the several training institutions of the Sri Lanka Army, continues to ensure that police officers and security forces personnel are trained to comply with and respect standards and norms pertaining to human rights and humanitarian law. Aspects of human rights and humanitarian law are now included in the normal syllabuses of police and security forces training.

188. The Government also informed the Committee that upon an in-depth analysis of the need to ensure that the Police Department and its personnel function only as a law enforcement entity and not as a supplementary force to the three security forces, it has established a new ministry, called the Ministry of the Interior, for the main purpose of effectively delinking the police from the security forces and the Ministry of Defence.

189. In addition, Directorates of Human Rights have been established in the Sri Lanka Navy and the Sri Lanka Air Force. The mandate of the Directorate of Human Rights of the Sri Lanka Army includes advising the Army Commander on all matters concerning international humanitarian law with regard to conflict situation; conducting training programmes among members of the Army; and closely coordinating with the office of the International Committee of the Red Cross in Colombo and the National Human Rights Commission to address human rights and humanitarian concerns.

190. The Government also informed the Committee that as a result of initial negotiations facilitated by the Government of Norway, on 23 February 2002, the Government of Sri Lanka was able to enter into a ceasefire agreement with the LTTE. According to the Government, the agreement contains a series of provisions to foster a conducive environment for enhanced peaceful coexistence amongst the different communities living in Sri Lanka and seeks to promote and protect their human rights.

191. In the light of the Committee's conclusion that torture and other forms of ill-treatment mainly take place in connection with the internal conflict, the recent developments, particularly the entry into force of the ceasefire agreement on 23 February 2002 monitored by an international monitoring mission, effectively removes the conditions which have been identified by the Committee as a major cause for the prevalence of torture and other forms of ill-treatment.

192. In terms of paragraph 2.1 of the agreement, the Government has undertaken to refrain from cordon and search operations or effecting any arrests or detentions of suspects under the provisions of the Prevention of Terrorism Act. In the event of a need arising to arrest a suspect alleged to have been involved in the commission of a terrorist act, such arrest would be made under the provisions of the normal law (Code of Criminal Procedure Act). The ceasefire agreement provides for a moratorium on the enforcement of the provisions of the Prevention of Terrorism Act. The Government informed the Committee that Emergency Regulations are not in force and that it is willing to examine and review the existing provisions of the Prevention of Terrorism Act.

193. In terms of paragraph 1.8 of the agreement, all Tamil paramilitary groups shall be disarmed within one month of the date on which the agreement came into force.

194. In addition, the Government informed the Committee that following the establishment of the Prosecution of Torture Perpetrators Unit in the Attorney-General's Department and the Torture Investigations Unit in the Criminal Investigations Department, all allegations of torture are impartially, promptly and comprehensively investigated and, where warranted, the perpetrators prosecuted.

7. Final remarks

195. The Committee welcomes the many significant efforts undertaken by the Government of Sri Lanka to fight and prevent acts of torture. It welcomes the ceasefire agreement and expresses appreciation for the measures taken to implement nearly all the recommendations made by the Committee. The Committee points out, however, that the fight against torture is an ongoing process which requires the vigilance of the State party.

V. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

196. Under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, individuals who claim to be victims of a violation by a State party of the provisions of the Convention may submit a complaint to the Committee against Torture for consideration, subject to the conditions laid down in that article. Forty-nine out of 129 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider complaints under article 22 of the Convention. The list of those States is contained in annex III. No complaint may be considered by the Committee if it concerns a State party to the Convention that has not recognized the Committee's competence under article 22.

197. Consideration of complaints under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential.

198. At its twenty-eighth session, the Committee adopted revised rules of procedure to facilitate and expedite the examination of complaints (annex IX).

199. Pursuant to revised rule 107 of the rules of procedure, with a view to reaching a decision on the admissibility of a complaint, the Committee, its Working Group, or a rapporteur designated under rules 98 or 106, paragraph 3, shall ascertain: that the individual claims to be a victim of a violation by the State party concerned of the provisions of the Convention; that the complaint is not an abuse of the Committee's process or manifestly unfounded; that it is not incompatible with the provisions of the Convention; that the same matter has not been and is not being examined under another procedure of international investigation or settlement; that the complainant has exhausted all available domestic remedies and that the time elapsed since the exhaustion of domestic remedies is not unreasonably prolonged as to render consideration of the claims unduly difficult for the Committee or the State party.

200. Pursuant to revised rule 109 of the rules of procedure, as soon as possible after a complaint has been registered, it shall be transmitted to the State party requesting a written reply within six months. Unless the Committee, the Working Group or a rapporteur decides, because of the exceptional nature of the case, to request a reply that relates only to the question of admissibility, the State party shall include in its reply explanations or statements that shall relate both to the admissibility and the merits of the complaint as well as to any remedy that may have been provided. A State party may apply, within two months, for the complaint to be rejected as inadmissible. The Committee, or the Rapporteur for new complaints and interim measures, may or may not agree to split the examination of admissibility from that of the merits. Following a separate decision on admissibility, the Committee shall fix the deadline for submissions on a case-by-case basis. The Committee, its Working Group or rapporteur(s) may request the State party concerned or the complainant to submit additional written information, clarifications or observations, and shall indicate a time limit for their submission. Within such time limits as indicated by the Committee, its Working Group or rapporteur(s), the State party or the complainant may be afforded an opportunity to comment on any submission received from the other party. Non-receipt of submissions or comments should not generally delay the consideration of the complaint, and the Committee or its Working Group may decide to consider the admissibility and/or merits in the light of available information.

201. The Committee concludes examination of a complaint by formulating a decision thereon in the light of all information made available to it by the complainant and the State party. The findings of the Committee are communicated to the parties (article 22, paragraph 7, of the Convention and rule 112 of the rules of procedure) and are made available to the general public. The text of the Committee's decisions declaring complaints inadmissible under article 22 of the Convention is also made public without disclosing the identity of the complainant, but identifying the State party concerned.

202. Pursuant to new rule 115, paragraph 1, of its revised rules of procedure, the Committee may decide to include in its annual report a summary of the communications examined. The Committee shall also include in its annual report the text of its decisions under article 22, paragraph 7, of the Convention.

A. New methods of work

203. At its twenty-seventh session, the Committee appointed one of its members, Mr. Mavrommatis, as Rapporteur for interim measures and confirmed him in this function at its twenty-eighth session as Rapporteur for new complaints and interim measures (rule 98). Also at its twenty-seventh session, the Committee decided to establish a pre-sessional working group of three to five members to assist the plenary in its work under article 22, and designated four of its members to participate in the first working group, Mr. Burns, Mr. Camara, Mr. González Poblete and Mr. Yakovlev. At the twenty-eighth session, the working group submitted recommendations to the Committee regarding the fulfilment of the conditions of admissibility as well as on the merits of complaints. Also at the twenty-eighth session, the Committee established the function of Rapporteur for follow-up and designated Mr. González Poblete and Ms. Gaer (alternate) as Rapporteurs (rule 114). The terms of reference of the Rapporteur for new complaints and interim measures are reproduced in annex VIII, and the text of the terms of reference of the Rapporteurs for follow-up are reproduced in annex IX.

B. Interim measures of protection

204. Complainants frequently request preventive protection, particularly in cases concerning imminent expulsion or extradition, and invoke in this connection article 3 of the Convention. Pursuant to revised rule 108, at any time after the receipt of a complaint, the Committee, its Working Group, or the Rapporteur for new complaints and interim measures may transmit to the State party concerned a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violations. The State party shall be informed that such a request does not imply a determination of the admissibility or the merits of the complaint. The Rapporteur for new complaints and interim measures shall monitor compliance with the Committee's requests for interim measures. The State party may inform the Committee that the reasons for the interim measures have lapsed or present arguments why the interim measures should be lifted. The Rapporteur, the Committee or its Working Group may withdraw the request for interim measures.

205. During the period under review, the Rapporteur for new complaints and interim Measures requested States parties to defer expulsion in a number of cases so as to allow the Committee to consider the complaints under the Committee's procedure. All States parties so requested acceded to the Committee's requests for deferral.

C. Progress of work

206. At the time of adoption of the present report the Committee had registered 209 complaints with respect to 21 countries. Of them, 55 complaints had been discontinued

and 38 had been declared inadmissible. The Committee had adopted final decisions on the merits with respect to 50 complaints and found violations of the Convention in 21 of them. Finally, 46 complaints remained outstanding.

207. At its twenty-seventh session, the Committee decided to discontinue consideration of three communications and declared one complaint admissible, to be considered on the merits. In addition, the Committee, while recalling that the principle of exhaustion of domestic remedies requires the complainant to use remedies that are directly related to the risk of torture under article 3 of the Convention, declared inadmissible communication No. 170/2000 (A.R. v. Sweden) under article 22, paragraph 5 (b), of the Convention. The text of this decision is reproduced in annex VII, section B, to the present report.

208. At its twenty-seventh session, the Committee adopted views in respect of communications Nos. 154/2000 (M.S. v. Australia), 156/2000 (M.S. v. Switzerland), 162/2000 (H.A. v. Australia), 166/2000 (B.S. v. Canada), 175/2000 (S.T. v. The Netherlands) and 178/2001 (H.O. v. Sweden). The t xt of the Committee's decisions is reproduced in annex VII, Section A, to the present report.

209. In its decisions on the above-mentioned cases, the Committee considered that the complainants had not substantiated their claims that they would risk being subjected to torture upon return to their countries of origin. The Committee therefore concluded in each case that the removal of the complainants to those countries would not breach article 3 of the Convention.

210. At its twenty-eighth session, the Committee declared inadmissible complaint 176/2000 (Roitman v. Spain), primarily because the complainant was not a victim within the meaning of article 22, paragraph 1, of the Convention. The text of the decision is reproduced in annex VII, section B, to the present report.

211. Also at its twenty-eighth session, the Committee adopted decisions in respect of complaints Nos. 111/1998 (R.S. v. Austria), 138/1999 (M.P.S. v. Australia), 146/1999 (E.T.B. v. Denmark), 164/2000 (L.M.T. v. Sweden), 177/2001 (H.I. v. Australia), 179/2001 (B.A.M. v. Sweden), 180/2001 (F.Z. v. Denmark) and 185/2001 (Karoui v. Sweden). The text of the Committee's decisions is reproduced in annex VII, section A, to the present report.

212. In its decision on complaint No. 111/1998 (R.S. v. Austria), the Committee considered that the Austrian authorities had not breached their obligation under article 13 of the Convention to carry out a prompt and impartial investigation.

213. In its decision on complaint No. 185/2001 (C.B.A.K. v. Sweden), the Committee found that the author had submitted substantive information, including medical reports showing that he had been subjected to torture in the past, a support letter from Amnesty International, and a statement from the chairman of the organization of which he was a member, which gave reason to believe that he would face a real risk of being subjected to torture if he were returned to Tunisia.

214. In its decision on complaints Nos. 138/1999 (M.P.S. v. Australia), 146/1999 (E.T.B. v. Denmark), 164/2000 (L.M.T. v. Sweden), 177/2001 (H.I. v. Australia), 179/2001

(B.A.M. v. Sweden) and 180/2001 (F.Z. v. Denmark), the Committee considered that the authors of the communications had not substantiated their claim that they would risk being subjected to torture upon return to their countries of origin. The Committee therefore concluded in each case that the removal of the complainants to those countries would not breach article 3 of the Convention.

VI. OPINION OF THE UNITED NATIONS LEGAL COUNSEL CONCERNING THE APPLICABILITY OF THE CONVENTION IN THE OCCUPIED PALESTINIAN TERRITORY

215. At its twenty-sixth session the Committee decided to seek the advice of the United Nations Legal Counsel concerning the applicability of the Convention in the Occupied Palestinian Territory. By a letter dated 22 June 2001 the Chairman of the Committee asked the Legal Counsel to provide the Committee with such opinion. In his reply of 19 September 2001 the Legal Counsel stated that, "the Convention is binding upon Israel, as the occupying Power in respect of the Occupied Palestinian Territory". He added that, "the Committee against Torture appears already to have proceeded upon this supposition".

VII. DISCUSSION ON THE SITUATION IN THE OCCUPIED PALESTINIAN TERRITORY IN THE LIGHT OF THE CONVENTION

216. At its twenty-eighth session the Committee decided, at the request of one of its members, to hold a discussion on the situation in the Occupied Palestinian Territory in the light of the Convention. Such discussion took place at the 522nd meeting, on 14 May 2002. As a result, the Committee decided, by a vote of 9 in favour and 1 against, that in the exercise of his/her mandate, the Rapporteur on follow-up to conclusions and recommendations adopted by the Committee with respect to reports submitted by States parties should take into consideration the discussion held at the above-mentioned meeting.

VIII. ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE

217. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly. Since the Committee holds its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, it adopts its annual report at the end of its spring session, for appropriate transmission to the General Assembly during the same calendar year. Accordingly, at its 528th meeting, held on 17 May 2002, the Committee considered and unanimously adopted the report on its activities at the twenty-seventh and twenty-eighth sessions.

Annex I

States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as at 17 May 2002

State	Date of signature	Date of receipt of the instrument of ratification or accession
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994[a]
Algeria	26 November 1985	12 September 1989
Antigua and Barbuda		19 July 1993[a]
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993[a]
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996[a]
Bahrain		6 March 1998[a]
Bangladesh		5 October 1998[a]
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	25 June 1999
Belize		17 March 1986[a]
Benin		12 March 1992[a]
Bolivia	4 February 1985	12 April 1999
Bosnia and Herzegovina		6 March 1992[b]
Botswana	8 September 2000	8 September 2000
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Burkina Faso		4 January 1999[a]
Burundi		18 February 1993[a]
Cambodia		15 October 1992[a]
Cameroon		19 December 1986[a]
Canada	23 August 1985	24 June 1987
Cape Verde		4 June 1992[a]
Chad		9 June 1995[a]
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987

State	Date of signature	Date of receipt of the instrument of ratification or accession
Comoros	22 September 2000	
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995[a]
Croatia		8 October 1991[b]
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	18 July 1991
Czech Republic		1 January 1993[b]
Democratic Republic of the Congo		18 March 1996[a]
Denmark	4 February 1985	27 May 1987
Dominican Republic	4 February 1985	
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986[a]
El Salvador		17 June 1996[a]
Estonia		21 October 1991[a]
Ethiopia		14 March 1994[a]
Finland	4 February 1985	30 August 1989
France	4 February 1985	18 February 1986
Gabon	21 January 1986	8 September 2000
Gambia	23 October 1985	
Georgia		26 October 1994[a]
Germany	13 October 1986	1 October 1990
Ghana	7 September 2000	7 September 2000[a]
Greece	4 February 1985	6 October 1988
Guatemala		5 January 1990[a]
Guinea	30 May 1986	10 October 1989
Guinea Bissau	12 September 2000	
Guyana	25 January 1988	19 May 1988
Honduras		5 December 1996[a]
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996
India	14 October 1997	
Indonesia	23 October 1985	28 October 1998
Ireland	28 September 1992	11 April 2002
Israel	22 October 1986	3 October 1991
Italy	4 February 1985	12 January 1989

State	Date of signature	Date of receipt of the instrument of ratification or accession
Japan		29 June 1999[a]
Jordan		13 November 1991[a]
Kazakhstan		26 August 1998
Kenya		21 February 1997[a]
Kuwait		8 March 1996[a]
Kyrgyzstan		5 September 1997[a]
Latvia		14 April 1992[a]
Lebanon		5 October 2000[a]
Lesotho		12 November 2001[a]
Libyan Arab Jamahiriya		16 May 1989[a]
Liechtenstein	27 June 1985	2 November 1990
Lithuania		1 February 1996[a]
Luxembourg	22 February 1985	29 September 1987
Madagascar	1 October 2001	
Malawi		11 June 1996[a]
Mali		26 February 1999[a]
Malta		13 September 1990[a]
Mauritius		9 December 1992[a]
Mexico	18 March 1985	23 January 1986
Monaco		6 December 1991[a]
Mongolia		24 January 2002
Morocco	8 January 1986	21 June 1993
Mozambique		14 September 1999[a]
Namibia		28 November 1994[a]
Nauru	12 November 2001	
Nepal		14 May 1991[a]
Netherlands	4 February 1985	21 December 1988
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	
Niger		5 October 1998[a]
Nigeria	28 July 1988	28 June 2001
Norway	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988

State	Date of signature	Date of receipt of the instrument of ratification or accession
Philippines		18 June 1986[a]
Poland	13 January 1986	26 July 1989
Portugal	4 February 1985	9 February 1989
Qatar		11 January 2000[a]
Republic of Korea		9 January 1995[a]
Republic of Moldova		28 November 1995[a]
Romania		18 December 1990[a]
Russian Federation	10 December 1985	3 March 1987
Saint Vincent and the Grenadines		1 August 2001[a]
Sao Tome and Principe	6 September 2000	
Saudi Arabia		23 September 1997[a]
Senegal	4 February 1985	21 August 1986
Seychelles		5 May 1992[a]
Sierra Leone	18 March 1985	25 April 2001
Slovakia		29 May 1993[b]
Slovenia		16 July 1993[a]
Somalia		24 January 1990[a]
South Africa	29 January 1993	10 December 1998
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994[a]
Sudan	4 June 1986	
Sweden	4 February 1985	8 January 1986
Switzerland	4 February 1985	2 December 1986
Tajikistan		11 January 1995[a]
The former Yugoslav Republic of Macedonia		12 December 1994[b]
Togo	25 March 1987	18 November 1987
Tunisia	26 August 1987	23 September 1988
Turkey	25 January 1988	2 August 1988
Turkmenistan		25 June 1999[a]
Uganda		3 November 1986[a]

State	Date of signature	Date of receipt of the instrument of ratification or accession
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988
United States of America	18 April 1988	21 October 1994
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995[a]
Venezuela	15 February 1985	29 July 1991
Yemen		5 November 1991[a]
Yugoslavia	18 April 1989	10 September 1991[b]
Zambia		7 October 1998[a]

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[a] Accession.

[b] Succession.

Annex II

States parties that have declared, at the time of ratification or accession, that they do not recognize the competence of the Committee provided for by article 20 of the Convention, as at 17 May 2002[a]

Afghanistan

China

Israel

Kuwait

Morocco

Saudi Arabia

Ukraine

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[a] Total of seven States parties.

Annex III

States parties that have made the declarations provided for in articles 21 and 22 of the Convention, as at 17 May 2002[a]

State party	Date of entry into force
Algeria	12 October 1989
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Belgium	25 July 1999
Bulgaria	12 June 1993
Cameroon	11 November 2000
Canada	24 July 1987
Costa Rica	27 February 2002
Croatia	8 October 1991
Cyprus	8 April 1993
Czech Republic	3 September 1996
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Germany	19 October 2001
Ghana	7 October 2000
Greece	5 November 1988
Hungary	26 June 1987
Iceland	22 November 1996
Ireland	11 April 2002
Italy	11 February 1989
Liechtenstein	2 December 1990
Luxembourg	29 October 1987
Malta	13 October 1990
Monaco	6 January 1992
Netherlands	20 January 1989
New Zealand	9 January 1990
Norway	26 June 1987

State party	Date of entry into force
Poland	12 June 1993
Portugal	11 March 1989
Russian Federation	1 October 1991
Senegal	16 October 1996
Slovakia	17 April 1995
Slovenia	16 July 1993
South Africa	10 December 1998
Spain	20 November 1987
Sweden	26 June 1987
Switzerland	26 June 1987
Togo	18 December 1987
Tunisia	23 October 1988
Turkey	1 September 1988
Uruguay	26 June 1987
Venezuela	26 April 1994
Yugoslavia	10 October 1991

States parties that have only made the declaration provided for in article 21 of the Convention, as at 17 May 2002

Japan	29 June 1999
Uganda	19 December 2001
United Kingdom of Great Britain and Northern Ireland	8 December 1988
United States of America	21 October 1994

States parties that have only made the declaration provided for in article 22 of the Convention, as at 17 May 2002[b]

Azerbaijan	4 February 2002
Mexico	15 March 2002
Seychelles	6 August 2001

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[a] Total of 46 States parties.

[b] A total of 49 States parties have made the declaration under article 22.

Annex IV

Membership of the Committee against Torture in 2002

Name of Members	Country of nationality	Term expires on 31 December
Mr. Peter Thomas BURNS	Canada	2003
Mr. Guibril CAMARA	Senegal	2003
Mr. Sayed Kassem EL MASRY	Egypt	2005
Ms. Felice GAER	USA	2003
Mr. Alejandro GONZÁLEZ POBLETE	Chile	2003
Mr. Fernando MARIÑO MENÉNDEZ	Spain	2005
Mr. Andreas MAVROMMATIS	Cyprus	2003
Mr. Ole Vedel RASMUSSEN	Denmark	2005
Mr. Alexander M. YAKOVLEV	Russian Federation	2005
Mr. YU Mengjia	China	2005

Annex V

Status of submission of reports by States parties under article 19 of the Convention, as at 17 May 2002

A. Initial reports

Initial reports due in 1988 (27)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Afghanistan	26 June 1987	25 June 1988	21 January 1992	CAT/C/5/Add.31
Argentina	26 June 1987	25 June 1988	15 December 1988	CAT/C/5/Add.12/Rev.1
Austria	28 August 1987	27 August 1988	10 November 1988	CAT/C/5/Add.10
Belarus	26 June 1987	25 June 1988	11 January 1989	CAT/C/5/Add.14
Belize	26 June 1987	25 June 1988	18 April 1991	CAT/C/5/Add.25
Bulgaria	26 June 1987	25 June 1988	12 September 1991	CAT/C/5/Add.28
Cameroon	26 June 1987	25 June 1988	15/2/89 and 25/4/91	CAT/C/5/Add.16 and 26
Canada	24 July 1987	23 July 1988	16 January 1989	CAT/C/5/Add.15
Denmark	26 June 1987	25 June 1988	26 July 1988	CAT/C/5/Add.4
Egypt	26 June 1987	25 June 1988	26/7/88 and 20/11/90	CAT/C/5/Add.5 and 23
France	26 June 1987	25 June 1988	30 June 1988	CAT/C/5/Add.2
German Democratic Republic	9 October 1987	8 October 1988	19 December 1988	CAT/C/5/Add.13
Hungary	26 June 1987	25 June 1988	25 October 1988	CAT/C/5/Add.9
Luxembourg	29 October 1987	28 October 1988	15 October 1991	CAT/C/5/Add.29
Mexico	26 June 1987	25 June 1988	10/8/88 and 13/2/90	CAT/C/5/Add.7 and 22

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Norway	26 June 1987	25 June 1988	21 July 1988	CAT/C/5/Add.3
Panama	23 September 1987	22 September 1988	28 January 1991	CAT/C/5/Add.24
Philippines	26 June 1987	25 June 1988	26/7/88 and 28/4/89	CAT/C/5/Add.6 and 18
Russian Federation	26 June 1987	25 June 1988	6 December 1988	CAT/C/5/Add.11
Senegal	26 June 1987	25 June 1988	30 October 1989	CAT/C/5/Add.19 (Replacing Add.8)
Spain	20 November 1987	19 November 1988	19 March 1990	CAT/C/5/Add.21
Sweden	26 June 1987	25 June 1988	23 June 1988	CAT/C/5/Add.1
Switzerland	26 June 1987	25 June 1988	14 April 1989	CAT/C/5/Add.17
Togo	18 December 1987	17 December 1988		
Uganda	26 June 1987	25 June 1988		
Ukraine	26 June 1987	25 June 1988	17 January 1990	CAT/C/5/Add.20
Uruguay	26 June 1987	25 June 1988	6/6/91 and 5/12/91	CAT/C/5/Add.27 and 30

Initial reports due in 1989 (10)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Chile	30 October 1988	29 October 1989	21/9/89 and 5/11/90	CAT/C/7/Add.2 and 9
China	3 November 1988	2 November 1989	1 December 1989	CAT/C/7/Add.5 and 14
Colombia	7 January 1988	6 January 1989	24/4/89 and 28/8/90	CAT/C/7/Add.1 and 10
Czech and Slovak Federal Republic	6 August 1988	5 August 1989	21/11/89 and 14/5/91	CAT/C/7/Add.4 and 12
Ecuador	29 April 1988	28 April 1989	27/6/90 and 28/2/91 and 26/9/91	CAT/C/7/Add.7 and 11 and 13

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Greece	5 November 1988	4 November 1989	8 August 1990	CAT/C/7/Add.8
Guyana	18 June 1988	17 June 1989		
Peru	6 August 1988	5 August 1989	9/11/92 and 22/2/94	CAT/C/7/Add.15 and 16
Tunisia	23 October 1988	22 October 1989	25 October 1989	CAT/C/7/Add.3
Turkey	1 September 1988	31 August 1989	24 April 1990	CAT/C/7/Add.6

Initial reports due in 1990 (11)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Algeria	12 October 1989	11 October 1990	13 February 1991	CAT/C/9/Add.5
Australia	7 September 1989	6 September 1990	27/8/91-11/6/92	CAT/C/9/Add.8 and 11
Brazil	28 October 1989	27 October 1990	26 May 2000	CAT/C/9/Add.16
Finland	29 September 1989	28 September 1990	28 September 1990	CAT/C/9/Add.4
Guinea	9 November 1989	8 November 1990		
Italy	11 February 1989	10 February 1990	30 December 1991	CAT/C/9/Add.9
Libyan Arab Jamahiriya	15 June 1989	14 June 1990	14/5/91-27/8/92	CAT/C/9/Add.7 and 12/Rev.1
Netherlands	20 January 1989	19 January 1990	14/3-11/9-13/9/90	CAT/C/9/Add.1-3
Poland	25 August 1989	24 August 1990	22 March 1993	CAT/C/9/Add.13
Portugal	11 March 1989	10 March 1990	7 May 1993	CAT/C/9/Add.15
United Kingdom of Great Britain and Northern Ireland	7 January 1989	6 January 1990	22/3/91-30/4/92	CAT/C/9/Add.6, 10 and 14

Initial reports due in 1991 (7)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Germany	31 October 1990	30 October 1991	9 March 1992	CAT/C/12/Add.1
Guatemala	4 February 1990	3 February 1991	2/11/94 and 31/7/95	CAT/C/12/Add.5 and 6
Liechtenstein	2 December 1990	1 December 1991	5 August 1994	CAT/C/12/Add.4
Malta	13 October 1990	12 October 1991	3 January 1996	CAT/C/12/Add.7
New Zealand	9 January 1990	8 January 1991	29 July 1992	CAT/C/12/Add.2
Paraguay	11 April 1990	10 April 1991	13 January 1993	CAT/C/12/Add.3
Somalia	23 February 1990	22 February 1991		

Initial reports due in 1992 (10)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Croatia	8 October 1991	7 October 1992	4 January 1996	CAT/C/16/Add.6
Cyprus	17 August 1991	16 August 1992	23 June 1993	CAT/C/16/Add.2
Estonia	20 November 1991	19 November 1992	19 June 2001	CAT/C/16/Add.9
Israel	2 November 1991	1 November 1992	25 January 1994	CAT/C/16/Add.4
Jordan	13 December 1991	12 December 1992	23 November 1994	CAT/C/16/Add.5
Nepal	13 June 1991	12 June 1992	6 October 1993	CAT/C/16/Add.3
Romania	17 January 1991	16 January 1992	14 February 1992	CAT/C/16/Add.1
Venezuela	28 August 1991	27 August 1992	8 July 1998	CAT/C/16/Add.8
Yemen	5 December 1991	4 December 1992		
Yugoslavia	10 October 1991	9 October 1992	20 January 1998	CAT/C/16/Add.7

Initial reports due in 1993 (8)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Benin	11 April 1992	10 April 1993	12 February 2001	CAT/C/21/Add.3
Bosnia and Herzegovina	6 March 1992	5 March 1993		
Cambodia	14 November 1992	13 November 1993		
Cape Verde	4 July 1992	3 July 1993		
Czech Republic	1 January 1993	31 December 1993	18 April 1994	CAT/C/21/Add.2
Latvia	14 May 1992	13 May 1993		
Monaco	5 January 1992	4 January 1993	14 March 1994	CAT/C/21/Add.1
Seychelles	4 June 1992	3 June 1993		

Initial reports due in 1994 (8)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Antigua and Barbuda	18 August 1993	17 August 1994		
Armenia	13 October 1993	12 October 1994	20/4/95 and 21/12/95	CAT/C/24/Add.4 and Rev.1
Burundi	20 March 1993	19 March 1994		
Costa Rica	11 December 1993	10 December 1994	10 August 2000	CAT/C/24/Add.7
Mauritius	8 January 1993	7 January 1994	10/5/94-1/3/95	CAT/C/24/Add.1 and 3
Morocco	21 July 1993	20 July 1994	29 July 1994	CAT/C/24/Add.2
Slovakia	28 May 1993	27 May 1994	1 May 2000	CAT/C/24/Add.6
Slovenia	15 August 1993	14 August 1994	10 August 1999	CAT/C/24/Add.5

Initial reports due in 1995 (7)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Albania	10 June 1994	9 June 1995		
Ethiopia	13 April 1994	12 April 1995		
Georgia	25 November 1994	24 November 1995	4 June 1996	CAT/C/28/Add.1
Namibia	28 December 1994	27 December 1995	23 August 1996	CAT/C/28/Add.2
Sri Lanka	2 February 1994	1 February 1995	27 October 1997	CAT/C/28/Add.3
The former Yugoslav Republic of Macedonia	12 December 1994	11 December 1995	22 May 1998	CAT/C/28/Add.4
United States of America	20 November 1994	19 November 1995	15 October 1999	CAT/C/28/Add.5

Initial reports due in 1996 (6)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Chad	9 July 1995	8 July 1996		
Cuba	16 June 1995	15 June 1996	15 November 1996	CAT/C/32/Add.2
Republic of Korea	8 February 1995	7 February 1996	10 February 1996	CAT/C/32/Add.1
Republic of Moldova	28 December 1995	27 December 1996	17 September 2001	CAT/C/32/Add.4
Tajikistan	10 February 1995	9 February 1996		
Uzbekistan	28 October 1995	27 October 1996	18 February 1999	CAT/C/32/Add.3

Initial reports due in 1997 (8)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Azerbaijan	15 September 1996	14 September 1997	18 December 1998	CAT/C/37/Add.3
Côte d'Ivoire	17 January 1996	16 January 1997		
Democratic Republic of the Congo	17 April 1996	16 April 1997		
El Salvador	17 July 1996	16 July 1997	5 July 1999	CAT/C/37/Add.4
Iceland	22 November 1996	21 November 1997	12 February 1998	CAT/C/37/Add.2
Kuwait	7 April 1996	6 April 1997	5 August 1997	CAT/C/37/Add.1
Lithuania	2 March 1996	1 March 1997		
Malawi	11 July 1996	10 July 1997		

Initial reports due in 1998 (4)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Honduras	4 January 1997	3 January 1998		
Kenya	23 March 1997	22 March 1998		
Kyrgyzstan	5 October 1997	4 October 1998	9 February 1999	CAT/C/42/Add.1
Saudi Arabia	22 October 1997	21 October 1998	27 February 2001	CAT/C/42/Add.2

Initial reports due in 1999 (6)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Bahrain	5 April 1998	4 April 1999		
Bangladesh	4 November 1998	3 November 1999		
Indonesia	27 November 1998	26 November 1999	7 February 2001	CAT/C/47/Add.3
Kazakhstan	25 September 1998	24 September 1999	15 August 2000	CAT/C/47/Add.1
Niger	4 November 1998	3 November 1999		
Zambia	6 November 1998	5 November 1999	1 December 2000	CAT/C/47/Add.2

Initial reports due in 2000 (8)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Belgium	25 July 1999	25 July 2000	14 August 2001	CAT/C/52/Add.2
Bolivia	12 May 1999	11 May 2000	16 May 2000	CAT/C/52/Add.1
Burkina Faso	3 February 1999	2 February 2000		
Japan	29 July 1999	29 July 2000		
Mali	28 March 1999	27 March 2000		
Mozambique	14 October 1999	14 October 2000		
South Africa	9 January 1999	8 January 2000		
Turkmenistan	25 July 1999	25 July 2000		

Initial reports due in 2001 (5)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Botswana	8 October 2000	7 October 2001		
Gabon	8 October 2000	7 October 2001		
Ghana	7 October 2000	6 October 2001		
Lebanon	4 November 2000	3 November 2001		
Qatar	10 February 2000	9 February 2001		

Initial reports due in 2002 (4)

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Lesotho	12 December 2001	11 August 2002		
Nigeria	28 July 2001	27 July 2002		
Saint Vincent and the Grenadines	31 August 2001	30 August 2002		
Sierra Leone	25 May 2001	24 May 2002		

B. Second periodic reports

Second periodic reports due in 1992 (26)

State party	Second periodic report date due	Date of submission	Symbol
Afghanistan	25 June 1992		
Argentina	25 June 1992	29 June 1992	CAT/C/17/Add.2
Austria	27 August 1992	12 October 1998	CAT/C/17/Add.21
Belarus	25 June 1992	15 September 1992	CAT/C/17/Add.6
Belize	25 June 1992		
Bulgaria	25 June 1992	19 June 1998	CAT/C/17/Add.19
Cameroon	25 June 1992	20 November 1999	CAT/C/17/Add.22
Canada	23 July 1992	11 September 1992	CAT/C/17/Add.5
Denmark	25 June 1992	22 February 1995	CAT/C/17/Add.13
Egypt	25 June 1992	13 April 1993	CAT/C/17/Add.11
France	25 June 1992	19 December 1996	CAT/C/17/Add.18
Hungary	25 June 1992	23 September 1992	CAT/C/17/Add.8
Luxembourg	28 October 1992	3 August 1998	CAT/C/17/Add.20
Mexico	25 June 1992	21 July 1992 and 28 May 1996	CAT/C/17/Add.3 and Add.17
Norway	25 June 1992	25 June 1992	CAT/C/17/Add.1
Panama	22 September 1992	21 September 1992	CAT/C/17/Add.7
Philippines	25 June 1992		
Russian Federation	25 June 1992	17 January 1996	CAT/C/17/Add.15
Senegal	25 June 1992	27 March 1995	CAT/C/17/Add.14
Spain	19 November 1992	19 November 1992	CAT/C/17/Add.10
Sweden	25 June 1992	30 September 1992	CAT/C/17/Add.9
Switzerland	25 June 1992	28 September 1993	CAT/C/17/Add.12
Togo	17 December 1992		
Uganda	25 June 1992		
Ukraine	25 June 1992	31 August 1992	CAT/C/17/Add.4
Uruguay	25 June 1992	25 March 1996	CAT/C/17/Add.16

Second periodic reports due in 1993 (9)

State party	Second periodic report date due	Date of submission	Symbol
Chile	29 October 1993	16 February 1994	CAT/C/20/Add.3
China	2 November 1993	2 December 1995	CAT/C/20/Add.5
Colombia	6 January 1993	4 August 1995	CAT/C/20/Add.4
Ecuador	28 April 1993	21 April 1993	CAT/C/20/Add.1
Greece	4 November 1993	6 December 1993	CAT/C/20/Add.2
Guyana	17 June 1993		
Peru	5 August 1993	20 January 1997	CAT/C/20/Add.6
Tunisia	22 October 1993	10 November 1997	CAT/C/20/Add.7
Turkey	31 August 1993	28 November 2001	CAT/C/20/Add.8

Second periodic reports due in 1994 (11)

State party	Second periodic report date due	Date of submission	Symbol
Algeria	11 October 1994	23 February 1996	CAT/C/25/Add.8
Australia	6 September 1994	19 October 1999	CAT/C/25/Add.11
Brazil	27 October 1994		
Finland	28 September 1994	11 September 1995	CAT/C/25/Add.7
Guinea	8 November 1994		
Italy	10 February 1994	20 July 1994	CAT/C/25/Add.4
Libyan Arab Jamahiriya	14 June 1994	30 June 1994	CAT/C/25/Add.3
Netherlands	19 January 1994	14/4/94 and 16/6/94 and 27/3/95	CAT/C/25/Add.1, 2 and 5
Poland	24 August 1994	7 May 1996	CAT/C/25/Add.9
Portugal	10 March 1994	7 November 1996	CAT/C/25/Add.10
United Kingdom of Great Britain and Northern Ireland	6 January 1994	25 March 1995	CAT/C/25/Add.6

Second periodic reports due in 1995 (7)

State party	Second periodic report date due	Date of submission	Symbol
Germany	30 October 1995	17 December 1996	CAT/C/29/Add.2
Guatemala	3 February 1995	13 February 1997	CAT/C/29/Add.3
Liechtenstein	1 December 1995	3 September 1998	CAT/C/29/Add.5
Malta	12 October 1995	29 September 1998	CAT/C/29/Add.6
New Zealand	8 January 1995	25 February 1997	CAT/C/29/Add.4
Paraguay	10 April 1995	10 July 1996	CAT/C/29/Add.1
Somalia	22 February 1995		

Second periodic reports due in 1996 (10)

State party	Second periodic report date due	Date of submission	Symbol
Croatia	7 October 1996	5 March 1998	CAT/C/33/Add.4
Cyprus	16 August 1996	12 September 1996	CAT/C/33/Add.1
Estonia	19 November 1996		
Israel	1 November 1996	6 December 1996	CAT/C/33/Add.2/Rev.1
		and 7 February 1997 (special report)	CAT/C/33/Add.3
		26 February 1998	
Jordan	12 December 1996		
Nepal	12 June 1996		
Romania	16 January 1996		
Venezuela	27 August 1996	1 September 2000	CAT/C/33/Add.5
Yemen	4 December 1996		
Yugoslavia	9 October 1996		

Second periodic reports due in 1997 (8)

State party	Second periodic report date due	Date of submission	Symbol
Benin	10 April 1997		
Bosnia and Herzegovina	5 March 1997		
Cambodia	13 November 1997		
Cape Verde	3 July 1997		
Czech Republic	31 December 1997	14 February 2000	CAT/C/38/Add.1

State party	Second periodic report date due	Date of submission	Symbol
Latvia	13 May 1997		
Monaco	4 January 1997		
Seychelles	3 June 1997		

Second periodic reports due in 1998 (8)

State party	Second periodic report date due	Date of submission	Symbol
Antigua and Barbuda	17 August 1998		
Armenia	12 October 1998	15 June 1999	CAT/C/43/Add.3
Burundi	19 March 1998		
Costa Rica	10 December 1998		
Mauritius	7 January 1998	8 June 1998	CAT/C/43/Add.1
Morocco	20 July 1998	2 September 1998	CAT/C/43/Add.2
Slovakia	27 May 1998		
Slovenia	14 August 1998	8 October 2001	CAT/C/43/Add.4

Second periodic reports due in 1999 (7)

State party	Second periodic report date due	Date of submission	Symbol
Albania	9 June 1999		
Ethiopia	12 April 1999		
Georgia	24 November 1999	15 November 1999	CAT/C/48/Add.1
Namibia	27 December 1999		
Sri Lanka	1 February 1999		
The former Yugoslav Republic of Macedonia	11 December 1999		
United States of America	19 November 1999		

Second periodic reports due in 2000 (6)

State party	Second periodic report date due	Date of submission	Symbol
Chad	8 July 2000		
Cuba	15 June 2000		
Republic of Korea	7 February 2000		
Republic of Moldova	27 December 2000		
Tajikistan	9 February 2000		
Uzbekistan	27 October 2000	5 December 2000	CAT/C/53/Add.1

Second periodic reports due in 2001 (8)

State party	Second periodic report date due	Date of submission	Symbol
Azerbaijan	14 September 2001	2 November 2001	CAT/C/59/Add.1
Côte d'Ivoire	16 January 2001		
Democratic Republic of the Congo	16 April 2001		
El Salvador	16 July 2001		
Iceland	21 November 2001	27 November 2001	CAT/C/59/Add.2
Kuwait	6 April 2001		
Lithuania	1 March 2001		
Malawi	10 July 2001		

Second periodic reports due in 2002 (4)

State party	Second periodic report date due	Date of submission	Symbol
Honduras	3 January 2002		
Kenya	22 March 2002		
Kyrgyzstan	4 September 2002		
Saudi Arabia	21 October 2002		

C. Third periodic reports

Third periodic reports due in 1996 (26)

State party	Third periodic report date due	Date of submission	Symbol
Afghanistan	25 June 1996		
Argentina	25 June 1996	26 September 1996	CAT/C/34/Add.5
Austria	27 August 1996		
Belarus	25 June 1996	29 September 1999	CAT/C/34/Add.12
Belize	25 June 1996		
Bulgaria	25 June 1996		
Cameroon	25 June 1996		
Canada	23 July 1996	19 October 1999	CAT/C/34/Add.13
Denmark	25 June 1996	5 July 1996	CAT/C/34/Add.3
Egypt	25 June 1996	30 October 1998	CAT/C/34/Add.11
France	25 June 1996		
Hungary	25 June 1996	21 April 1998	CAT/C/34/Add.10
Luxembourg	28 October 1996	30 October 2000	CAT/C/34/Add.14
Mexico	25 June 1996	25 June 1996	CAT/C/34/Add.2
Norway	25 June 1996	6 February 1997	CAT/C/34/Add.8
Panama	22 September 1996	19 May 1997	CAT/C/34/Add.9
Philippines	25 June 1996		
Russian Federation	25 June 1996	5 December 2000	CAT/C/34/Add.15
Senegal	25 June 1996		
Spain	19 November 1996	18 November 1996	CAT/C/34/Add.7
Sweden	25 June 1996	23 August 1996	CAT/C/34/Add.4
Switzerland	25 June 1996	7 November 1996	CAT/C/34/Add.6
Togo	17 December 1996		
Uganda	25 June 1996		
Ukraine	25 June 1996	19 June 1996	CAT/C/34/Add.1
Uruguay	25 June 1996		

Third periodic reports due in 1997 (9)

State party	Third periodic report date due	Date of submission	Symbol
Chile	29 October 1997	18 February 2002	CAT/C/39/Add.4
China	2 November 1997	5 May 1999	CAT/C/39/Add.2
Colombia	6 January 1997	17 January 2002	CAT/C/39/Add.4
Ecuador	28 April 1997		
Greece	4 November 1997	29 November 1999	CAT/C/39/Add.3
Guyana	17 June 1997		
Peru	5 August 1997	12 December 1998	CAT/C/39/Add.1
Tunisia	22 October 1997		
Turkey	31 August 1997		

Third periodic reports due in 1998 (11)

State party	Third periodic report date due	Date of submission	Symbol
Algeria	11 October 1998		
Australia	6 September 1998		
Brazil	27 October 1998		
Finland	28 September 1998	16 November 1998	CAT/C/44/Add.6
Guinea	8 November 1998		
Italy	10 February 1998	22 July 1998	CAT/C/44/Add.2
Libyan Arab Jamahiriya	14 June 1998	2 September 1998	CAT/C/44/Add.3
Netherlands	19 January 1998	3 September 1998 and 27 December 1999	CAT/C/44/Add.4 and 8
Poland	24 August 1998	11 November 1998	CAT/C/44/Add.5
Portugal	10 March 1998	2 February 1999	CAT/C/44/Add.7
United Kingdom of Great Britain and Northern Ireland	6 January 1998	2 April 1998	CAT/C/44/Add.1

Third periodic reports due in 1999 (7)

State party	Third periodic report date due	Date of submission	Symbol
Germany	30 October 1999		
Guatemala	3 February 1999	18 January 2000	CAT/C/49/Add.2
Liechtenstein	1 December 1999		
Malta	12 October 1999		
New Zealand	8 January 1999	10 January 2002	CAT/C/49/Add.3
Paraguay	10 April 1999	14 June 1999	CAT/C/49/Add.1
Somalia	22 February 1999		

Third periodic reports due in 2000 (10)

State party	Third periodic report date due	Date of submission	Symbol
Croatia	7 October 2000	3 December 2001	CAT/C/54/Add.3
Cyprus	16 August 2000	29 June 2001	CAT/C/54/Add.2
Estonia	19 November 2000		
Israel	1 November 2000	15 March 2001	CAT/C/54/Add.1
Jordan	12 December 2000		
Nepal	12 June 2000		
Romania	16 January 2000		
Venezuela	27 August 2000		
Yemen	4 December 2000		
Yugoslavia	9 October 2000		

Third periodic reports due in 2001 (8)

State party	Third periodic report date due	Date of submission	Symbol
Benin	10 April 2001		
Bosnia and Herzegovina	5 March 2001		
Cambodia	13 November 2001		
Cape Verde	3 July 2001		
Czech Republic	31 December 2001	5 March 2002	CAT/C/60/Add.1
Latvia	13 May 2001		
Monaco	4 January 2001		
Seychelles	3 June 2001		

Third periodic reports due in 2002 (8)

State party	Third periodic report date due	Date of submission	Symbol
Antigua and Barbuda	17 August 2002		
Armenia	12 October 2002		
Burundi	19 March 2002		
Costa Rica	10 December 2002		
Mauritius	7 January 2002		
Morocco	20 July 2002		
Slovakia	27 May 2002		
Slovenia	14 August 2002		

D. Fourth periodic reports

Fourth periodic reports due in 2000 (26)

State party	Fourth periodic report date due	Date of submission	Symbol
Afghanistan	25 June 2000		
Argentina	25 June 2000		
Austria	27 August 2000		
Belarus	25 June 2000		
Belize	25 June 2000		
Bulgaria	25 June 2000		
Cameroon	25 June 2000		
Canada	23 July 2000		
Denmark	25 June 2000	4 August 2000	CAT/C/55/Add.2
Egypt	25 June 2000	19 February 2001	CAT/C/55/Add.6
France	25 June 2000		
Hungary	25 June 2000		
Luxembourg	28 October 2000		
Mexico	25 June 2000		
Norway	25 June 2000	15 September 2000	CAT/C/55/Add.4
Panama	22 September 2000		
Philippines	25 June 2000		
Russian Federation	25 June 2000		
Senegal	25 June 2000		
Spain	19 November 2000	8 January 2001	CAT/C/55/Add.5

State party	Fourth periodic report date due	Date of submission	Symbol
Sweden	25 June 2000	21 August 2000	CAT/C/55/Add.3
Switzerland	25 June 2000		
Togo	17 December 2000		
Uganda	25 June 2000		
Ukraine	25 June 2000	31 July 2000	CAT/C/55/Add.1
Uruguay	25 June 2000		

Fourth periodic reports due in 2001 (9)

State party	Fourth periodic report date due	Date of submission	Symbol
Chile	29 October 2001		
China	2 November 2001		
Colombia	6 January 2001		
Ecuador	28 April 2001		
Greece	4 November 2001	21 January 2002	CAT/C/61/Add.1
Guyana	17 June 2001		
Peru	5 August 2001		
Tunisia	22 October 2001		
Turkey	31 August 2001		

Fourth periodic reports due in 2002 (11)

State party	Fourth periodic report date due	Date of submission	Symbol
Algeria	11 October 2002		
Australia	6 September 2002		
Brazil	27 October 2002		
Finland	28 September 2002		
Guinea	8 November 2002		
Italy	10 February 2002		
Libyan Arab Jamahiriya	14 June 2002		
Netherlands	19 January 2002		
Poland	24 August 2002		
Portugal	10 March 2002		
United Kingdom of Great Britain and Northern Ireland	6 January 2002		

Annex VI

Country rapporteurs and alternate rapporteurs for the reports of States parties considered by the Committee at its twenty-seventh and twenty-eighth sessions

A. Twenty-seventh session

Report	Rapporteur	Alternate
Ukraine: fourth periodic report (CAT/C/55/Add.1)	Mr. El Masry	Mr. Rasmussen
Benin: initial report (CAT/C/21/Add.3)	Mr. Camara	Mr. González Poblete
Indonesia: initial report (CAT/C/47/Add.3)	Ms. Gaer	Mr. Yu
Zambia: initial report (CAT/C/47/Add.2)	Mr. Mavrommatis	Mr. Rasmussen
Israel: third periodic report (CAT/C/54/Add.1)	Mr. Burns	Mr. Yakovlev

B. Twenty-eighth session

Saudi Arabia: initial report (CAT/C/42/Add.2)	Mr. Burns	Mr. Yakovlev
Denmark: fourth periodic report (CAT/C/55/Add.2)	Mr. El Masry	Mr. Camara
Sweden: fourth periodic report (CAT/C/55/Add.3)	Mr. Camara	Mr. Yu
Norway: fourth periodic report (CAT/C/55/Add.4)	Mr. Yu	Mr. El Masry
Luxembourg: third periodic report (CAT/C/34/Add.14)	Mr. Mavrommatis	Mr. Camara
Uzbekistan: second periodic report (CAT/C/53/Add.1)	Mr. Yakovlev	Ms. Gaer
Russian Federation: third periodic report (CAT/C/34/Add.15)	Ms. Gaer	Mr. Rasmussen

Annex VII

Decisions of the Committee against Torture under article 22 of the Convention

A. Decisions on merits

Complaint No. 111/1998

Complainant: Mr. R.S.
[represented by Mr. Richard Soyer, counsel in Vienna, Austria]

State party: Austria

Date of communication: 16 April 1997 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 April 2002,

Having concluded its consideration of communication No. 111/1998, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having take into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. R.S., an Austrian citizen, at the time of the first submission imprisoned in Vienna, Austria, on a conviction for housebreaking, procuring of prostitution and drug trafficking. He claims to be the victim of violations by Austria of article 13 of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3 of the Convention, the Committee transmitted the petition to the State party on 11 January 1999.

Facts as submitted by the complainant

2.1 On 30 July 1996, the complainant was questioned by police officers at the Leopoldstadt District Police station of the Vienna Federal Police Directorate. While the complainant was questioned by officers of one investigation team, three officers entered the room and brought the complainant into the office of one of them. The officers of the investigation team protested against the complainant's transfer, because they had not yet finished their interrogation. Shortly after the complainant had been brought into the other office, he was found outside the office with

three bleeding injuries on his right lower leg. The complainant was examined by a medical officer of the police and photos of the injuries were taken. On 1 August 1996, the complainant was transferred by his private doctor to hospital for further examinations that were undertaken on 2 August 1996. The complainant was released immediately. The report of the hospital, submitted by the complainant, documented injuries of the right lower leg and a slightly swollen nose.

2.2 On 9 August 1996, the Vienna Federal Police Directorate sent a report on the facts of the case and the allegations of the complainant that he had been ill-treated to the Public Prosecutor's Office. On 20 August 1996, the Public Prosecutor instituted court proceedings against the three police officers charging them with mistreatment of a prisoner and attempted coercion.

2.3 The first court hearing took place on 7 October 1996. On 6 November 1996, the complainant's trial attorney proposed to the court and to the prosecutor that an examining judge be assigned, in accordance with a decree by the Federal Ministry of Justice, to complete the preliminary investigation carried out by the Federal Police Directorate. This proposal was rejected by the court and the prosecutor. On 25 November 1996, the three police officers were acquitted. On 10 March 1997, the prosecutor withdrew his appeal. It is submitted that, therefore, the decision of the court is final.

The complaint

3.1 The complainant claims that on 30 July 1996 he was subjected to ill-treatment by three police officers while being questioned at the Leopoldstadt District Police station of the Vienna Federal Police Directorate. Allegedly, one police officer made him fall to the ground and then kicked him. The complainant alleges further that this police officer intentionally kicked him and stepped on his rights shin, which was already injured.[8] As a result the wound started to bleed. When the complainant stood up his face was slapped by another police officer. He was then told to make a confession. The complainant states that a fourth police officer was present in the room, but that he did not participate in the ill-treatment.

3.2 The complainant claims that at the first court hearing on 7 October 1996 before the Vienna Regional Criminal Court, serious deficiencies in the preliminary inquiry appeared. In particular, the investigations did not attempt to identify the fourth person in the interrogation room, despite the fact that the testimony of that person would have been essential to determining the facts.

3.3 The complainant contends that the preliminary inquiries lacked the necessary impartiality, because they were carried out by the police and, therefore, constituted a breach of article 13 of the Convention. Impartial investigations would have identified the "fourth person".

3.4 The complainant further submits that there is no legal basis in Austrian law for preliminary police inquiries such as the one carried out in the present case, although such inquiries are frequently conducted in Austria. Neither a magistrate's preliminary investigation nor a legal preliminary inquiry, both provided for in the Code of Criminal Procedure, was carried out.

3.5 Finally the complainant submits that the only domestic remedy still available is a civil action (*Amtshaftungsklage*). Such an action, however, would not be practicable, because in the absence of a thorough criminal investigation a civil action would fail.

State party's observations on admissibility

4.1 On 20 May 1999, the State party submits that the case should be declared inadmissible. The State party states that the interrogation of the complainant by the first investigation team was interrupted when the officer assigned to the case at the police station had him brought into his office to be examined by the medical officer of the Vienna Federal Police Directorate in order to determine whether his health and state of mind were impaired as a result of drug consumption.

4.2 After being examined by the medical officer, the complainant told another official of the station (Colonel P.) that he had been ill-treated by the officer who had questioned him, the medical office and other police officer. Colonel P. immediately informed the head of the police station of the complainant's allegations. The latter phoned, without delay, the President of the Vienna Federal Police Directorate and the Director of the Criminal Investigations Office (*Sicherheitsbüro*) and requested them to take action. The Criminal Investigations office immediately opened an investigation. On the same day, only about one and a half hours after the complainant had made the allegations, he was taken to the Criminal Investigations Office and questioned at length.

4.3 The accused police officers and Colonel P. were interrogated extensively on 31 July and 1 August 1996. Five other police officers were also questioned thoroughly by officers of the Criminal Investigations Office on 2, 5 and 6 August 1996. The Criminal Investigations Office also tried, unsuccessfully, to find out whether a fourth person had been present during the alleged ill-treatment.

4.4 The Criminal Investigations Office submitted a Statement of Facts to the Vienna Public Prosecutor's Office on 9 August 1996 reporting on the results of its investigations. The public prosecutor filed charges against the accused police officers with the Vienna Regional Criminal Court on 20 August 1996 for having inflicted suffering on and trying to coerce a prisoner. This information arrived at the Vienna Regional Criminal Court on 28 August 1996.

4.5 The Criminal Investigations Office continued its inquiries and found that a fourth person (G.W.) had come into the office where the complainant was being questioned. That person was an official from the Vienna city administration who testified that he had stayed in the office for no more than one or two minutes and that during this time there had been no signs of any ill-treatment of the complainant. This information was submitted to the Public Prosecutor's Office on 26 August 1996.

4.6 On 7 October 1996 the trial against the three police officers began at the Vienna Regional Criminal Court. The complainant and the accused police officers were questioned at length by the court in the presence of the public prosecutor, counsel for the defence and the complainant's representative. A number of witnesses were also questioned, including G.W. who repeated that he had stayed in the office, where the complainant allegedly had been ill-treated, for a short period and had not witnessed any ill-treatment.

4.7 In view of the complainant's denial that G.W. was the fourth person, the Criminal Investigations Office continued its inquiries parallel to the court proceedings. In this regard the complainant was requested, on 30 August 1996, to assist the officers in their efforts, but he replied that he would not answer any summons and did not make any statements when a photograph of G.W. was shown to him.

4.8 The three accused officers were acquitted for lack of evidence by judgement entered on 25 November 1996. The court relied in particular on the medical expert opinion, according to which the ill-treatment alleged by the complainant would have had further consequences which would have been noticed by the medical officer who examined the complainant immediately after the alleged incident. The expert also took the view that the complainant might have inflicted the injury upon himself. An appeal announced by the prosecutor's office was withdrawn on 6 March 1997 and therefore the judgement became final. Subsequent to that, the disciplinary proceedings initiated against one of the three officers were discontinued, whereas another one was acquitted in such proceedings; no disciplinary proceedings were initiated against the third officer.

4.9 The State party claims that the complainant's right under article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to have his case promptly and impartially examined by the competent authorities was fully secured. On the same day the complainant made his allegations, the President of the Vienna Federal Police Directorate was informed and the Criminal Investigations Office started its investigations. The State party notes in this respect that the Criminal Investigations Office and the district police stations belong to different departments of the police and that these departments are independent of each other.

4.10 The fact that the investigation was carried out by the Criminal Investigations Office, which deals with only the more serious crimes, shows that the case was given prompt attention by the competent authorities. The delay between the beginning of investigations and the passing on of information to the Public Prosecutor's Office was the shortest possible and the inquiries carried out afterwards were extensive. Comprehensive investigations were carried out following the complainant's statement that a fourth person had been present during the alleged ill-treatment. This is said to show that the investigating authorities were unbiased and conducted the necessary investigations impartially.

4.11 The results of the investigations would have been the same even if preliminary examinations had been conducted by a court of law or the file had been sent back to the investigating judge. The witnesses and the accused persons questioned by police officers during the preliminary investigations were again questioned at length by the judge at the trial. Hence, any possible faults of the preliminary investigation would have been corrected at that time. Acceding to the request made on 6 November 1996 by the representative of the complainant to return the file to the investigating judge would have been counterproductive, as it would not have produced any new results and would have created a considerable delay in the criminal proceedings.

4.12 The State party finally contends that the prerequisites enshrined in the Convention have not been fulfilled in the case at issue and considers that the Committee should declare the complaint inadmissible.

Comments by the complainant

5. In a letter, dated 28 July 1999, the complainant stated that he had submitted all relevant information.

Decision on admissibility

6. At its twenty-third session, in November 1999, the Committee considered the admissibility of the complaint under article 22 of the Convention. In the case under consideration the Committee noted that the communication was not anonymous and that the same matter was not being nor had been examined under another procedure of international investigation or settlement. It also noted that complainant's statement that all domestic remedies had been exhausted. The State party did not contest that statement. Moreover, the Committee considered that the complaint did not constitute an abuse of the right of submission of such communications nor was it incompatible with the provisions of the Convention. It held that the observations submitted by the State party concerned the merits rather than the admissibility issue. The Committee, therefore, found that no obstacles to the admissibility of the complaint existed. Accordingly, the Committee declared the complaint admissible on 18 November 1999.

State party's observations on the merits

7.1 In it submission dated 9 June 2000, the State party refers to its previous presentation of the facts of the case.

7.2 In response to a request by the Committee, the State party submits information on the procedure set forth in its domestic legislation to deal with complaints of torture. The State party contends that remedies are available, which in their entirety ensure a prompt and impartial examination of cases of alleged torture that meet the requirements of article 13 of the Convention.

Complainant's comments on the merits

8.1 In his submission of 8 January 2002, the complainant makes additional submission confirming his previous claims.

8.2 He submits that notwithstanding the State party's claim that adequate investigations were undertaken into the allegations of torture, in fact, the Criminal Investigations Office did not take any adequate or effective measure to identify the fourth person who was present during the ill-treatment. The only inquiry mentioned by the State party was the summons of the complainant to appear at the Criminal Investigation Office to identify a photograph, on 30 August 1996. The complainant argues that he refused to cooperate because, at that time, only police investigations were carried out, without participation of judicial authorities, and the complainant did not trust the independence of these investigations.

8.3 The complainant further submits that the Public Prosecutor's Office is not an impartial and independent authority for the investigation of allegations against members of the security organs, as it is subject to orders by the Federal Minister of Justice. The complainant argues that only the investigative judge, whose independence is guaranteed by article 87 of the Federal Constitution of Austria, would be adequate to carry out such investigations. In the present case, the Regional Criminal Court refused to take action through the investigative judge.

Consideration of the merits

9.1 The Committee has considered the present complaint in the light of all information made available by the parties, as provided for in article 22, paragraph 4, of the Convention.

9.2 The Committee notes the complainant's claim that the State party was in breach of article 13 of the Convention, because the Regional Criminal Court failed to open a judicial investigation into his allegations of torture. He contends that only a judicial investigation could be considered impartial. In this connection the Committee observes that the decision of the Regional Criminal Court of 25 November 1996 reveals that the court took into account all evidence presented by the complainant and the prosecutor when deciding to acquit the three policemen. The Committee finds that the complainant has failed to substantiate in what way the investigations conducted by the State party were not impartial within the meaning of article 13 of the Convention.

10. The Committee against Torture concludes that the State party did not violate the rule laid down in article 13 of the Convention and that, in the light of the information submitted to it, no finding of any violation of any other provisions of the Convention can be made.

Note

[a] This injury was a burn that Mr. R.S. had inflicted on himself when he had been in prison approximately four years before the incident at issue. The burn did not completely heal and still tended to open.

Complaint No. 138/1999

Complainant: Mr. M.P.S.

Represented by: Ms. Chanrani Buddhipala, counsel in Epping, Australia

State party: Australia

Date of Complaint: 4 June 1999 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 April 2002,

Having concluded its consideration of complaint No. 138/1999, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts this Decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. M.P.S., a Sri Lankan national of Tamil ethnicity, who, at the time of submitting his complaint, was detained at the Villawood Detention Centre in Sydney, Australia. He claims that his removal to Sri Lanka entailed a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Australia. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 21 June 1999 at 2.35 p.m. Geneva time. At the same time, acting under rule 108 of its rules of procedure, the Committee requested the State party not to expel the complainant to Sri Lanka while his complaint was being considered. The Committee notes the information from the State party that the complainant was removed from Australia on 21 June 1999. The Secretary-General's note verbale was received by the Permanent Mission of Australia when the complainant had allegedly already been deported to Sri Lanka.

The facts as submitted by the complainant

2.1 On 9 September 1997, the complainant arrived in Australia without a passport or other identification papers. On 15 September 1997, he applied for refugee status (protection visa) to the Department of Immigration and Multicultural Affairs. His application was rejected on 25 September 1997. The decision not to grant a protection visa was confirmed by the Refugee Review Tribunal (RRT) on 30 October 1997, after conducting a hearing, where a legal adviser and an interpreter assisted the complainant. Upon decision of the Federal Court of 13 May 1998, the matter was referred back to the RRT for re-determination.

On 20 August 1998, the Tribunal decided again not to grant a protection visa, after hearing the complainant. On 3 February 1999, the federal Court dismissed the complainant's appeal against the second RRT decision. An appeal to the Full Court of the Federal Court was dismissed on 14 May 1999. On 3 November 1997, 20 August 1998 and 18 June 1999, his case was considered not to satisfy the requirements for granting a visa to remain in Australia on humanitarian grounds. Counsel submits that all effective domestic remedies have been exhausted.

2.2 Counsel submits that the complainant lived in Nuwara Eliya, an area in the south of Sri Lanka. In 1989, when fighting broke out between the pro-Sinhalese movement Janatha Vimurthi Peramuna (JVP) and the Government in the Nuwara Eliya area, the complainant was arrested and detained for six to seven months in the Diyatalawa Army Camp on suspicion of being a member of JVP. During this time, the complainant was allegedly questioned and subjected to torture by army officers. The complainant's father paid a large amount of money to secure his release.

2.3 From 1992 to 1995, members of the Liberation Tigers of Tamil Eelam (LTTE), friends of his wife's family, visited frequently and the complainant was obliged to provide food and accommodation. On the last occasion, in October 1995, several members of the LTTE came to stay with his family for 15 days. During this time, the oil tanks in Kolonawa, Colombo, were bombed and the police believed that the people staying with the complainant's family had been involved. The complainant was allegedly taken to the police station in Nuwara Eliya, interrogated and tortured. It is submitted that the complainant had only been released after three days upon payment of a large amount of money to the police officer in charge.

2.4 In February 1996, the LTTE accused the complainant of providing the Government with information on the oil tank attack. Counsel submits that the complainant was beaten and threatened with death. After intervention by his family and his wife, he was spared.

2.5 Towards the end of February 1996, the complainant was arrested by the police and taken to Diyathalawa Army Camp, detained for three days, and allegedly tortured. Counsel submits that the father of the complainant paid a large amount of money for his release. Immediately after his release, the complainant fled Nuwara Eliya for fear of the Sri Lankan authorities and the LTTE. He stayed with friends in Kandy and later in Hatton for some months, before he went to Colombo.

2.6 Later in 1996, the Maradana police arrested the complainant in Colombo, detained him for one week and questioned him on his relationship with the LTTE. It is submitted that the complainant was beaten every night by police officers and that he was not given proper food. In March 1997, the complainant managed to flee Sri Lanka to Cambodia, Bangkok and Sydney.

2.7 Counsel submits that in view of the two arrests of the complainant with regard to the Kolonawa bomb blast, there is a real chance that he would be arrested again should he return to Sri Lanka. Counsel believes that the documents, which have been taken away from the complainant by the police, have been supplied to the secret police (NIB) and, therefore, the authorities will be in a position to trace the complainant wherever he lives. Counsel argues that the complainant had been arrested and come to the attention of the security forces for providing a

safe place to LTTE members who allegedly were involved in what is considered to be one of the major assassinations committed by the LTTE. The complainant would very likely be detained and interrogated at the airport upon his return to Colombo.

2.8 Counsel further submits that there are substantial grounds for believing that the complainant would be in danger of being subjected to torture by Sri Lankan police, security forces and the LTTE if he returned to Sri Lanka. The complainant experienced torture and ill-treatment by the authorities and the LTTE before he left the country. Counsel quotes Human Rights Watch reports and reports by the United States Department of State of 1996 as evidence of a consistent pattern of gross and systematic violations of human rights in Sri Lanka. Counsel argues that under the Prevention of Terrorism Act and Emergency Regulations the police can arrest on the basis of mere suspicion, often based on the presumption of guilt arising merely from a person coming from the north or east of the country. In such an atmosphere, counsel sees every chance that the complainant, as a Tamil-speaking young man from the Eastern Province of Sri Lanka, will be harassed and mistreated by the authorities on mere suspicion. Counsel quotes from Sri Lankan newspaper headlines and articles in this regard.

The complaint

3.1 Counsel submits that the evaluation of evidence in asylum procedures in Australia is deficient. Counsel argues that the Australian immigration authorities expect an applicant to give the full facts on his claim upon his arrival. Counsel submits that this is not justified, as asylum-seekers behave initially in an irrational and inadequate way, do not trust the authorities and are only ready to tell the true and complete story after having been in the country for some time. Therefore, the opinion of the Australian Government that whatever is invoked later is not trustworthy is considered absurd by counsel, as in cases such as the complainant's new statements have to be accepted by the RRT in spite of the fact that the story was incoherent, inconsistent and contradictory in the beginning.

3.2 Counsel claims that the deportation of the complainant to Sri Lanka violated article 3 of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment. Counsel argues that there were substantial grounds for believing that the complainant would be in danger of being subjected to torture if deported. Given the absolute prohibition to expel a person where he risks being subjected to torture, counsel submits that the complainant should not have been removed.

3.3 Counsel claims that the evidence of a consistent pattern of gross and massive violations of human rights in Sri Lanka prohibits the Government of Australia from expelling the complainant.

State party's observations on admissibility and merits

4.1 The State party submits that it has been its practice to comply with requests for interim measures by the Committee whenever it has been in a position to do so. However, the complainant was removed from Australia on 21 June 1999 at 4.30 a.m. Geneva time. The text of the complaint and the Committee's request was received after the complainant had been removed from Australia, i.e. in the ordinary mail at the Permanent Mission of Australia in Geneva in the late morning of 21 June 1999, and, subsequently, on the same day at 2.36 p.m. Geneva time on the Mission's fax machine.

4.2 The State party contests the allegations of procedural shortcomings with regard to the handling of evidence when considering the case of the complainant. The State party submits that the complainant has provided no evidence that the alleged procedural irregularities amount to a breach of any of the provisions of the Convention and, therefore, this claim should be dismissed as inadmissible ratione materiae. Alternatively, the State party submits that, except in limited circumstances, it is beyond the competence of the Committee to review findings of fact or the interpretation of domestic legislation by national organs of the State party. Furthermore, the State party submits that any issue arising from possible errors of law by the first RRT decision would have been rectified subsequently. The complainant failed to refer to the second and third decisions of the Federal Court in this regard.

4.3 The State party contests that there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Sri Lanka. The State party submits that the risk of ill-treatment by the LTTE alleged by the complainant does not raise an issue for consideration by the Committee, because the complainant failed to provide any evidence that the LTTE would act with the consent or acquiescence of the Sri Lankan authorities. Furthermore, the complainant failed to demonstrate that the LTTE are exercising quasi-governmental authority over an area to which he is to be returned and, therefore, could be regarded as an agent for the purposes of article 3 of the Convention. Alternatively, the State party submits that the complainant has failed to submit that he is at risk of being tortured by the LTTE. In this regard, the State party requests that the complaint be declared inadmissible ratione materiae. With regard to the risk of being tortured by Sri Lankan authorities, the State party submits that the complainant's evidence lacks credibility or, alternatively, is not sufficient to establish a real, foreseeable and personal risk of being subjected to torture.

4.4 The State party requests that the complaint be declared inadmissible ratione materiae as far as the complainant relies on an interpretation of article 3 of the Convention that a pattern of gross violations of human rights in the receiving State is sufficient to trigger the international protection of article 3.

4.5 Finally, the State party notes that the right not to be tortured is protected under domestic law in Sri Lanka. Furthermore, Sri Lanka ratified the Convention and is a party to the International Covenant on Civil and Political Rights.

Issues and proceedings before the Committee

5. The Committee notes that the Federal Court had dismissed the complainant's claim on 18 June 1999, thus leaving the complainant with only three days to avail himself of article 22 of the Convention.

Considerations of the admissibility

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee notes the State party's claim that the communication is inadmissible ratione materiae (see paras. 4.2-4.3). The Committee, however, is of the opinion that the State party's arguments raise substantive issues which should be dealt with at the merits and not the admissibility stage. The Committee, therefore, considers that the conditions laid down in article 22, paragraph 5 (b), of the Convention have been met. Since the Committee sees no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

7.1 The issue before the Committee is whether the forced return of the complainant to Sri Lanka violated the obligation of Australia under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention whether there were substantial grounds for believing that the alleged victim would have been in danger of being subjected to torture upon return to Sri Lanka. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 In the present case, the Committee notes the State party's argument that it is beyond its competence to review findings of fact or the interpretation of domestic legislation by national organs of the State party. The Committee agrees that it cannot overturn an authoritative domestic organ's interpretation of the application of domestic legislation, but reiterates that it is

not bound by findings of fact that are made by organs of the State party and instead has the power, provided for by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.[a] The Committee recalls that, even though there may be some remaining doubt as to the veracity of the facts adduced by a complainant, it must ensure that his security is not endangered.[b] In order to do this, it is not necessary that all the facts invoked by the complainant should be proved; it is sufficient that the Committee should consider them to be sufficiently substantiated and reliable.

7.4 With regard to the complainant's claim that he was in danger of being subjected to torture by the LTTE, the Committee recalls that the State party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to article 1, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". The Committee recalls its previous jurisprudence that the issue whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention.[c]

7.5 The Committee notes with concern the reports of torture by public officials in Sri Lanka, including those submitted by the complainant, but points out that, for the purposes of article 3 of the Convention, substantial grounds must exist that create a foreseeable, real and personal risk of torture in the country to which the complainant is to be returned. On the basis of the facts as submitted by the complainant, the Committee is of the opinion that such grounds have not been established. Therefore, the Committee considers that the complainant has not substantiated his claim that he was personally at a real risk of being subjected to torture, if returned to Sri Lanka.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Sri Lanka, on the basis of the information submitted, did not constitute a breach of article 3 of the Convention.

Notes

[a] General Comment No. 1, sixteenth session (1996), para. 9 (b).

[b] See Mutombo v. Switzerland, case No. 13/1993, Views adopted on 27 April 1994, para. 9.2.

[c] G.R.B. v. Sweden, case No. 83/1997, Views adopted on 15 May 1998, para. 6.5.

Complaint No. 146/1999

Complainant: Ms. E.T.B.

Represented by: Let Bosnia Live, a non-governmental organization

State party: Denmark

Date of submission: 9 August 1999

Date of decision: 30 April 2002

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 April 2002,

Having concluded its consideration of complaint No. 146/1999, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts its Decision under article 22, paragraph 7, of the Convention.

Decision

1.1 The complainant is E.T.B, a Georgian citizen, born on 19 March 1974, on behalf of herself and her two minor children, all three currently residing at the Danish Red Cross Centre for Refugees in Denmark, where the complainant seeks asylum for the family. The complainant claims that her return to Georgia after dismissal of her refugee claim would constitute a violation of article 3 of the Convention by Denmark. She is represented by the organization Let Bosnia Live.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted complaint No. 146/1999 to the State party on 11 October 1999. Pursuant to rule 108 of the Committee's rules of procedure, the State party was requested not to expel the complainant to Georgia pending the consideration of her case by the Committee. In a submission dated 10 December 1999, the State party informed the Committee that it had decided to comply with the Committee's request not to expel the complainant and her children while their complaint is under consideration by the Committee.

The facts as submitted

2.1 The complainant is a widow with two minor children, all Georgian citizens of Mengrel ethnic origin. In Georgia she and her deceased husband, M.B., were working for former Georgian President Gamsakhurdia (also a Mengrel) and his political party, the Zwiadists, and for the Mengrel cause in Georgia. The complainant has been a member of the Zwiadists since mid-1992, and started nursing wounded Zwiadists after she became a nurse in 1993. Her husband and her father were fighting for the Mengrel partisan army.

2.2 On 19 November 1993, the complainant was arrested together with 30 other women, among them her mother, while participating in an illegal demonstration of about 1,500 persons in her home city Zugditi, against the Government of President Shevardnadze. All the arrested women received a collective death sentence. The prison guards beat them frequently, and five of the women were executed. Prison guards raped two of her co-prisoners before they executed them. One of the guards sexually mistreated and raped the complainant, and she expected to be killed afterwards like her co-prisoners. However, shortly afterwards, on 31 December 1993, Mengrel partisans attacked the Zugditi prison and liberated all political prisoners. The complainant's father was among the attacking partisans. After being released, the complainant moved with her family to Gegetjkori. Meanwhile, the complainant's husband lived in a Mengrel partisan camp in the forest nearby. On 18 August 1994 he was wounded and captured by the Georgian army, and thereafter executed.

2.3 On 3 February 1996, the complainant, her two children and her mother left Georgia illegally, by boat to Poland and then, hidden in a truck, to Denmark. They arrived in Denmark on 12 February 1996. They went immediately to the police and requested asylum. A year later, the complainant's father also arrived in Denmark and requested asylum, after a long stay at a hospital in the Caucasus Mountains. He was not aware that his family was already residing in Denmark.

2.4 The Danish Immigration Service rejected the complainant's application for asylum on 22 May 1998. On 31 July 1998 her then counsel appealed to the Refugee Board. The application was rejected on 4 August 1998, and the complainant was ordered to leave Denmark on 19 August 1998. Two applications to reopen the complainant's case, submitted on 17 August and on 29 October 1998/1 December 1998, were refused by the Refugee Board on 23 September 1998 and 26 January 1999, respectively.

2.5 In its decision of 4 August 1998 the Board cited as grounds for the rejection that the attack on the prison on 31 December 1993, if it really happened, would have been mentioned in the background material available on Georgia, and that the complainant's father would have mentioned this attack in his own application for asylum, which he did not do. Even if it accepted the complainant's story, the Board did not consider that the complainant would be persecuted if she returned to Georgia. It referred to information received from UNHCR stating that partisans of President Gamsakhurdia are not persecuted only because they supported him.

2.6 In the application of 29 October 1998, counsel requested a reopening of the complainant's asylum case in the light of new information he had received. This information consisted of two new documents, including a death certificate for the husband and a declaration

from 10 of her neighbours in Gegetjkori confirming that the complainant had been threatened and persecuted by unknown persons who also killed her dog, leaving it in front of the door as a warning. Furthermore, counsel refers to media reports of new outbreaks between Zwiadists and government forces. Counsel also submitted Amnesty International's "Concerns for Georgia", dated October 1996, including information about torture and ill-treatment of political prisoners. In the letter of 1 December 1998, he submitted the complainant's medical record dating from her arrival in 1996 and describing her experiences of being subjected to torture.

2.7 On 22 February 1999, counsel requested reopening of the case on the basis of two reports from 1997 and 1998 of the International Helsinki Federation, describing serious human rights violations in Georgia. In response to the Refugee Board's grounds for rejection, he contended that the reports show their freedom of expression is restricted in Georgia, and that the authorities had suppressed news of the attack of the Zugditi prison and the escape of prisoners in the local media. Furthermore, although the reports do not describe the demonstration on 19 November 1993, they refer to several similar demonstrations in the periods prior to and following 19 November 1993. He also submitted that the complainant's description of the prison conditions is consistent with the reports. On 8 March, the Refugee Board rejected the application.

2.8 In May 1999, counsel directed letters about the complainant to 18 members of the Danish Parliament, requesting that they address the Minister of the Interior and ask that the complainant be granted a residence permit for humanitarian reasons. Seven members of Parliament contacted the Minister, who in turn referred the case to the Refugee Board, which rejected the request.

The complaint

3. Counsel claims that the complainant fears that if returned to Georgia, she will be arrested, tortured and killed for her participation in the Mengrel political organization the Zwiadists and in the demonstration that took place on 19 November 1993, because of her deceased husband's participation in the Mengrel army. Counsel adds that there exists a consistent pattern of human rights violations by Georgian authorities, in particular against political opponents, who risk torture and ill-treatment in prison, and there is overwhelming reason to believe that the complainant will be subjected to torture or other inhuman treatment if returned to Georgia.

State party observations on admissibility and the merits

4.1 In its note verbale of 10 December 1999, the State party submits its observations on the admissibility and the merits of the case. The State party submits that the complainant has failed to establish a prima facie case for purposes of admissibility of the petition, and that the case should therefore be declared inadmissible.

4.2 The State party contends that the Refugee Board has considered all aspects of the case, taking into account the State party's obligations under the Convention, and that no further information submitted to the Committee against Torture can reveal that the complainant risks torture if returned to Georgia. It points out that the Committee is not an appellate but a monitoring body, and that the complainant is using the Committee to obtain a renewed assessment of her case.

4.3 Concerning the assessment of whether there are substantial grounds for believing that the complainant will be in danger of being subjected to torture if returned to Georgia, the State party refers to the Refugee Board's decisions in their entirety. The State party emphasizes that according to background information available, only high-ranking or high-profile members of the Zwiadists are being persecuted and the complainant did not belong to this group. With reference to the Committee's jurisprudence in I.O.A. v. Sweden[a] and N.P. v. Australia[b], the State party argues that it is important whether information about the recipient country supports the complainant's allegations that she risks being subjected to torture. Furthermore, the State party refers to X. v. Switzerland[c] where the Committee emphasized that the applicant "does not belong to a political, professional or social group targeted by the authorities for repression and torture".

4.4 The State party reiterates that the Refugee Board did not accept the complainant's story that she had been liberated from detention through an armed attack, mainly because there were no references to such an action in their background material. Although the complainant claimed that her father had taken part in the attack, he did not mention the attack in his application for asylum. In this context, the State party refers to the Committee decision in H.D. v. Switzerland[d] where the Committee takes into account whether the complainant's presentation of the facts are considered well attested and credible.

4.5 Moreover, the Refugee Board found that even if the detention had taken place, they did not consider that the complainant risked persecution and torture if returned to Georgia. According to the State party, this assessment corresponds with the Committee's jurisprudence in A.L.N. v. Switzerland and X, Y and Z. v. Sweden.[e]

4.6 The State party emphasizes that there is no objective evidence to support the complainant's claim that she has been subjected to torture,[f] nor has it been established that she is wanted by the Georgian authorities.[g] The State party emphasizes that after her liberation, the complainant moved to the Gegetjkori region and resumed her political activities, but that she has not alleged any problems with the authorities while she resided there[h] and that the events that motivated her departure date relatively far back in time.[i]

4.7 The Refugee Board did not attach importance to the declaration of the complainant's neighbours, that the authorities had persecuted her family by visiting and threatening them, as this allegation was submitted at a later stage in the asylum proceedings and had not been mentioned in her previous statements. The State party refers to the Committee's practice that if a complainant changes his or her account during the processing of the asylum application, it is important that a logical explanation be given for doing so.[j]

4.8 The State party also considers it to be consistent with the Committee's jurisprudence that due weight be given to the fact that the Convention against Torture entered into force for Georgia on 25 November 1994.[k]

The complainant's comments on the State party's observations

5.1 In a letter of 7 February 2000, counsel refers to the Committee's jurisprudence in E.A. v. Switzerland[1] stating that it is sufficient that "substantial grounds" in article 3 require more than a mere possibility of torture but do not need to be highly likely to occur to satisfy that provision's conditions, and contends that the complainant fulfils this condition.

5.2 Regarding the State party's argument that the complainant's father did not mention in his asylum application that he had participated in the liberation of prisoners, among them the complainant, this is explained by his general scepticism towards authorities and his mental situation subsequent to his partisan life.

5.3 Furthermore, the complainant cannot document that she has been subjected to torture, including rape, as she has not undergone a medical examination in this regard. Her reluctance to submit this information to the Danish authorities is explainable by the trauma of such experiences. Counsel quotes the Committee's jurisprudence in Kisoki v. Sweden[2] that "complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the author's presentation of the facts are not material and do not raise doubts about the general veracity of the author's claims".

5.4 Counsel submits that although Georgia has ratified the Convention, it is apparent that, in view of the ongoing persecutions of political opponents, Georgia is not observing its obligations under the Convention.

5.5 Counsel attaches a letter from the Refugee Board saying that the Board has decided to reopen the complainant's case because of information that, if returned to Georgia, she risks deportation to Abkhasia. However, counsel submits in a further letter of 1 February 2002 that the Refugee Board's decision of 24 January 2002 was unfavourable to the complainant. It appears from the Refugee Board's decision that upon a general request from the State party, UNHCR responded that Georgian citizens upon return do not risk deportation to Abkhasia.

Decision concerning admissibility and examination of the merits

6. Before considering any claim contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes that the State party has objected to the admissibility of the complaint on the ground that the complainant has failed to establish a prima facie case for the purpose of admissibility. Considering the complainant's submissions regarding her membership with the Zwiadists since mid-1992, her participation in different aspects of their work and her alleged experiences of being subjected to torture, compared with the existing situation of persecution of political opponents in Georgia, the Committee finds that the complainant's allegations have crossed the threshold of admissibility, and the Committee therefore proceeds with the examination of the merits of the complaint.

7. In accordance with article 3, paragraph 1, of the Convention, the Committee has to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Georgia. In order to do this, the Committee must, in accordance with article 3, paragraph 2, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights.

8. However, the Committee has to determine whether the person concerned would be personally at risk of being subjected to torture in the country to which he or she would be expelled. Consequently, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a particular country does not in itself constitute a sufficient ground for concluding that a particular person would be in danger of being subjected to torture after returning to his or her country; additional grounds must exist in order to conclude that the person concerned is personally at risk.

9. In the present case, therefore, the Committee has to determine whether the expulsion of the complainant to Georgia would have the foreseeable consequence of exposing her to a real and personal risk of being arrested and tortured.

10. The State party has pointed to inconsistencies in the complainant's statements which in its opinion cast doubt on the veracity of her allegations. The Committee reaffirms its jurisprudence that torture victims cannot be expected to recall entirely consistent facts relating to events of extreme trauma. But they must be prepared to advance such evidence as there is in support of such a claim. The political activities that the complainant claims to have carried out since she became a member of the *Zwiadists* are not of such a nature as to conclude that she risks being tortured upon her return. Nor does any of the information provided reveal that the complainant risks being subjected to torture because of her husband's partisan work and execution by the governmental forces. This view is further supported by the fact that the complainant was not the object of interest by Georgian authorities after she was released from detention in 1993, and until she left the country in 1996. In this respect, the Committee does not attach importance to the neighbours' declaration that the complainant was persecuted while residing in Gegetjkori from 1994 to her departure in 1996, since she did not submit this allegation until 29 October 1998, more than two and a half years after she lodged her initial application for asylum.

11. On the basis of the above considerations, the Committee considers that the complainant has not substantiated her claim that she risks being subjected to torture upon return to Georgia.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Georgia would not constitute a breach of article 3 of the Convention.

Notes

[a] Complaint No. 65/1997, Decision adopted on 6 May 1998, para. 14.5.

[b] Complaint No. 106/1998, Decision adopted on 3 June 1999, para. 6.5.

[c] Complaint No. 38/1995, Decision adopted on 9 May 1997, para. 10.5.

[d] Complaint No. 112/1998, Decision adopted on 3 June 1999, para. 6.4; see similar statement in Seid Mortesa Aemei v. Switzerland, complaint No. 34/1995, Decision adopted on 29 May 1997, para. 9.6.

[e] Complaint No. 90/1997, Decision adopted on 19 May 1998, para. 8.3, and complaint No. 61/1996, Decision adopted on 6 May 1998, para. 11.2.

[f] Reference is made to complaint No. 65/1997, para. 14.3.

[g] Reference is made to complaint No. 94/1997, Decision adopted on 20 May 1998, K.N. v. Switzerland, paras. 10.3 and 10.4.

[h] Reference is made to complaint No. 112/1998, para. 6.5.

[i] Reference is made to X. v. Switzerland, complaint No. 27/1995, Decision adopted on 28 April 1997, para. 11.3.

[j] Reference is made to Orhan Ayas v. Sweden, complaints Nos. 97/1997, Decision adopted on 12 November 1998, para. 6.5, 106/1998, paragraph 6.6 and 104/1998, Decision adopted on 21 June 1998, M.B.B. v. Sweden, para. 6.6.

[k] Reference is made to Balabou Mutombo v. Switzerland, complaint No. 13/1993, Decision adopted on 27 April 1994, para. 9.6, and Tahir Hussain Khan v. Canada, complaint No. 15/1994, Decision adopted on 18 November 1994, para. 12.5.

[l] Complaint No. 28/1995, Decision adopted on 10 November 1997, para. 11.3.

[m] Complaint No. 41/1996, Decision adopted on 8 May 1996, para. 9.3.

Communication No. 154/2000

Submitted by:	M.S. (name withheld) [represented by counsel]
Alleged victim:	The petitioner
State party:	Australia
Date of communication:	25 January 2000

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2001,

Having concluded its consideration of communication No. 154/2000, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the petitioner and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1.1 The petitioner is M.S., an Algerian national, currently detained in the Immigration Detention Centre in Chester Hill, Australia. He claims that his removal to Algeria would entail a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Australia. He is represented by the Refugee Advice and Casework Service (Australia) Inc.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the Communication to the attention of the State party on 28 January 2000. At the same time, acting under rule 108, paragraph 9, of its rules of procedure, the Committee requested the State party not to expel the petitioner to Algeria while his communication was being considered.

The facts as submitted by the petitioner

2.1 On 24 August 1998, coming from South Africa, the petitioner arrived in Australia without valid travel documents. In his interview at the airport he requested the State party's protection as a refugee.

2.2 On 3 September 1998, the petitioner made an application for refugee status (protection visa) with the Department of Immigration and Multicultural Affairs under the Migration Act. On 2 October 1998, a delegate of the Minister for Immigration and Multicultural Affairs

delivered a decision denying a protection visa. On 14 December 1998, the Refugee Review Tribunal RRT) affirmed this decision. On 30 April 1999, the Federal Court of Australia dismissed the petitioner's request for judicial review.

2.3 On 22 March 1999, the petitioner requested the Minister for Immigration and Multicultural Affairs to intervene and set aside the decision of the RRT in the public interest, pursuant to section 417 of the Migration Act. In an undated letter, the Minister responded that he decided not to exercise this power. On 13 September 1999, counsel again wrote to the Minister requesting that the petitioner be permitted to submit a second application for a protection visa pursuant to section 48B of the Migration Act. Counsel has not received a response to this request.

2.4 The petitioner submits that he was involved in the social assistance activities of the Front islamique du salut (FIS) since 1990, i.e. after work, the petitioner sued to go to the local FIS office and assess what to give to families in need. In January 1992, after the results of the general election for the National Peoples' Assembly were cancelled, the local FIS office was closed and the petitioner was called by the police (gendarmerie) and questioned for more than two hours. The petitioner submits that after his release, he was required to report to the gendarmerie on a daily basis and not to leave his hometown, Ngaos. On 16 September 1994, supported by a friend, he left Algeria for the Syrian Arab Republic by plane. The day after his departure, and again in October, the gendarmerie questioned his father about the residence of the alleged victim. It is further submitted that the petitioner's father subsequently advised him not to return to Algeria because the police accused him of avoiding his military recall.

2.5 The petitioner submits that he left Algeria in 1994 after he heard of an official decree calling up reservists who had only served 18 months of military service for an extra six months. The petitioner had served in the National Republic Army from May 1988 to March 1990. The petitioner submits that in March 1994 it was reported that the Algerian Minister of the Interior announced the Government's intention to draft thousands of army reservists and that these reports were not before the RRT when it reviewed the case.

2.6 The petitioner submits that, in 1996, he obtained a copy of a court verdict, dated 17 November 1996, convicting him of forming a terrorist group and, in absentia, sentencing him to death.[a]

The complaint

3.1 The petitioner contends that his deportation to Algeria would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The petitioner argues that there are substantive grounds for believing that he would be in danger of being subjected to torture when deported to Algeria, because he has been perceived as an FIS sympathiser.

3.2 The petitioner claims that, upon his return, he would be targeted as a draft-evader and anti-Government opinions would automatically be attributed to him for avoiding military service.

3.3 The petitioner claims further that upon his return he would be arrested and tortured in connection with the court verdict of 1996. It is submitted that the judgement is consistent with counsel's knowledge of penalties for desertion in connection with perceived affiliation with the Islamists.

3.4 The petitioner claims that, upon his return, he will be interviewed at the airport about his time spent outside Algeria and his activities. He may be questioned on whether he applied for refugee status outside Algeria. The petitioner quotes a British newspaper report of June 1997 on the death of a refused asylum-seeker deported to Algeria.

3.5 The petitioner claims that Algeria is committing gross violations of human rights, which take place not only with total immunity, but are also sanctioned at the highest level. Recalling events that have occurred in Algeria since 1992, he further claims that there is a customary disregard by Algeria of its obligations under international human rights treaties.

3.6 The petitioner claims that all available domestic remedies have been exhausted. Notwithstanding the outstanding response from the Minister for Immigration and Multicultural Affairs and pursuant to the Migration Act, the alleged victim could be deported from Australia as soon as reasonably practical.

State party's observations on admissibility and merits

4.1 In its reply of 14 November 2000, the State party submits that the application is inadmissible, because it lacks the minimum substantiation as required by article 22 of the Convention.

4.2 Should the Committee find that the application is admissible, the State party submits that it lacks merit, as grounds for believing that the alleged victim would be subject to torture upon his return to Algeria are neither substantial, personal nor present.

4.3 While the State party acknowledges the seriousness of the human rights situation in Algeria, it submits that recent reports indicate that the situation has improved. The State party refers to the adoption of the Civil Harmony Law in 1999 and the agreement of the Algerian Ministry of the Interior to investigate cases of disappearances. The State party submits that Amnesty International, Human Rights Watch and the United States Department of State reported ad idem that the number of disappearances, arrests, torture, and extrajudicial killings carried out by agents of Algeria declined in 1999. The State party notes that Algeria acceded to the International Covenant on Civil and Political Rights, the Convention against Torture, with the declaration under articles 21 and 22, and the African Charter on Human and Peoples' Rights.

4.4 The State party submits that there is no substantial reason for believing that the petitioner will be subjected to torture upon his return to Algeria resulting from his claimed involvement with the FIS. The State party requests the Committee to accord appropriate weight to the findings of the RRT in this regard, since the petitioner did not provide new information in respect to this claim. The State party recalls the findings of the RRT that the petitioner has never been a member of the FIS and had no interest or involvement in its political activities and that the Algerian police had no interest in him whatsoever. The RRT argued that the petitioner's

submission that he was required to report to the police and restricted in his travel was not plausible in the light of the evidence of the treatment of FIS members during the time in question. Furthermore, in the light of recent developments in Algeria, the State party submits that sympathy with the FIS is unlikely to draw the attention of the Algerian authorities.

4.5 With regard to the military recall of the petitioner, the State party points at the findings by RRT that there was no military recall until March 1995. Country information received by the State party indicates that there was an earlier recall of reservists in 1991, but no further recall until March 1995. The State party recalls further that there was no evidence that the petitioner was recalled at all, while independent evidence indicated that a notice would have been sent to the petitioner's home. Even in the event that the petitioner had failed to respond to a recall of reservists, the alleged victim did not produce any specific information that he is likely to be subjected to torture. The State party points to UNHCR guidelines in respect of Algerian asylum-seekers and submits that the likelihood of arrest alone does not support allegations of the likelihood of torture.

4.6 The State party submits that the copy of the court verdict presented by the petitioner is unlikely to be genuine, given that the petitioner's own account of when the order was issued is inconsistent with the date of the order and the sentence imposed is inconsistent with information received concerning penalties imposed on reservists for the failure to respond to recall, i.e. arrest and imprisonment for a period of between 3 months and up to 10 years, depending on the circumstances. The State party further recalls Amnesty International's reports that Algeria has had a moratorium on carrying out death sentences since December 1994 and that none has been carried out since that time.

4.7 Insofar as the petitioner claims that he is at risk of being subjected to torture because of a suspicion that he has applied for refugee status or sought asylum, it is submitted that the alleged victim did not provide any evidence to support the observation that Algerian authorities have been made aware of his applications in Australia or South Africa. Country information received by the State party indicates that, even if the Algerian authorities were aware of the petitioner's applications, there is no substantial reason for believing that he would be subjected to torture.

Comments by the petitioner

5.1 The petitioner submits that the human rights situation in Algeria remains critical. He argues that Algeria continues to ignore or is unable to respond to allegations of torture and ill-treatment of those people arrested on suspicion of having links with armed groups. The petitioner recalls the note in the concluding observations of the Human Rights Committee in 1998 that there were numerous sources of information that torture, disappearances and summary executions occurred in Algeria. In addition, the petitioner notes Amnesty International's continuing concern regarding torture of those, who have been interrogated about possible contacts with members of armed groups.

5.2 The petitioner submits that the distinction made between his involvement with FIS and active membership in the organization is artificial. In addition, no evidentiary basis is presented for the conclusion that social assistance activities, which have obvious political significance, are not regarded as political by the Algerian authorities.

5.3 The petitioner submits that, in the light of recent developments, it is too simplistic to argue that the petitioner's sympathy with the FIS is unlikely to draw the attention of the Algerian gendarmerie to his case. It is argued that those who have not claimed the amnesty or who fall outside its terms as provided for by the Civil Harmony Law are likely to be pursued rigorously.

Issues and proceedings before the Committee

6.1 The Committee notes the information from the State party that the deportation of the petitioner has been suspended, in accordance with the Committee's request under rule 108, paragraph 9, of its rules of procedure.

6.2 Before considering any claims contained in a communication, the Committee against Torture must decide whether the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes that the State party considers the communication inadmissible for lack of sufficient substantiation. However, the State party did not submit further arguments in this regard, but arguments on the merits should the Committee find the communication admissible. The Committee, therefore, is of the opinion that the State party's arguments raise only substantive issues, which should be dealt with at the merits and not the admissibility stage. Since the Committee sees no further obstacles to admissibility, it declares the communication admissible.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the petitioner would be in danger of being subjected to torture upon return to Algeria. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.4 In the present case, the Committee notes that the petitioner's social activities for the FIS date back to the beginning of 1992, at which time he was detained and interrogated for two hours. It is not submitted that the petitioner was tortured or prosecuted for his activities for FIS before leaving for Syria.

6.5 The Committee notes that the petitioner invokes the protection of article 3 on the grounds that he is personally in danger of being arrested and tortured in connection with the disputed court verdict of 1996. However, the petitioner does not submit any information supporting the claim that the petitioner will be exposed to the risk of torture. The Committee considers that,

even if it were certain that the petitioner would be arrested on his return to Algeria because of a prior conviction, the mere fact that he would be arrested and retried would not constitute substantial grounds for believing that he would personally be in danger of being subjected to torture.[b]

6.6 With regard to the claim that the petitioner will be targeted and that an anti-Government opinion will automatically be attributed to him, the Committee notes that the petitioner did not present evidence that there was, in fact, a military recall of the petitioner at all. From the evidence before the Committee, it also cannot be established that the petitioner is at risk of being tortured if interviewed at the airport upon his return to Algeria.

6.7 The Committee recalls that, for the purposes of article 3 of the Convention, a foreseeable, real and personal risk must exist of being tortured in the country to which a person is returned. On the basis of the considerations above, the Committee considers that the petitioner has not presented sufficient evidence to convince the Committee that he faces a personal risk of being subjected to torture if returned to Algeria.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the petitioner to Algeria, on the basis of the information submitted, would not entail a breach of article 3 of the Convention.

Notes

[a] The translated text of the decision submitted by the petitioner reads in its relevant part: "The Court has in default sentenced accused 'M.S.' to death ...."

[b] See P.Q.L. v. Canada, communication No. 57/1996, para. 10.5.

Complaint No. 156/2000

Submitted by:	M.S. (name withheld) [represented by counsel]
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	9 February 2000

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 13 November 2001,

Having concluded its consideration of complaint No. 156/2000, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Adopts the following:

Views under article 22, paragraph 7, of the Convention

1.1 The complainant is a Sri Lankan national of Tamil origin, born on 13 April 1979. He is currently in Switzerland, where he applied for asylum. His application was turned down and he maintains that his expulsion to Sri Lanka would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He asked the Committee to deal with his case as a matter of urgency, as he was facing imminent expulsion when he submitted his complaint. He was represented by counsel until 9 April 2001.

1.2 On 21 February 2000, in accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party. At the same time, the Committee, acting in accordance with rule 108, paragraph 9, of its rules of procedure, requested the State party not to expel the complainant to Sri Lanka while his complaint was under consideration. On 23 May 2000, the State party informed the Committee that steps had been taken to ensure that the complainant was not sent back to Sri Lanka while his complaint was under consideration by the Committee.

The facts as presented by the author

2.1 The complainant states that, like most Sri Lankans of Tamil origin, he was forced to work from a very early age for the Liberation Tigers of Tamil Eelam (LTTE) movement, particularly in building bunkers and putting up propaganda posters. He says that he had to flee from Kilinochchi to Colombo because he refused to be more active in the movement.

2.2 The complainant maintains that he was arrested several times by the government authorities in Colombo and sometimes held for over a fortnight and that he was tortured on the grounds of being a member of the Tamil Tigers. He says that he was taken before the court on several occasions, the first time being on 15 March 1997, before being released shortly afterwards. He adds that he was arrested again on 3 January 1999 by the Colombo police and detained for a month before being brought before the court again on 10 February 1999. According to the complainant, the judge released him only on condition that he report every Saturday to the office of the Criminal Investigation Department (CID) in order to sign a register.

2.3 The complainant states that he fled Sri Lanka on 28 March 1999 with the help of a trafficker. He adds that, as a result of his flight, a warrant was issued for his arrest, with reference to which a document issued by the Colombo police was produced dated 23 August 1999. He arrived in Switzerland on 29 March 1999.

2.4 The complainant's application for asylum in Switzerland, filed on 30 March 1999, was turned down on 18 August 1999. On 10 December 1999, in response to an appeal lodged by the complainant on 21 September 1999, the Swiss Appeal Commission on Asylum Matters upheld the original decision to refuse asylum. The complainant was given until 15 January 2000 to leave the country, but, on 10 January 2000, requested an extension of the deadline on health grounds. On 20 January 2000, the Federal Office for Refugees found that those grounds did not justify postponement, but decided to extend the deadline until 15 February 2000 to allow the author time to prepare his departure.

The complaint

3.1 The complainant states that his return to Sri Lanka would heighten the suspicions of the local police that he was a member of the Tamil Tigers, so that he would be in danger of being summarily arrested and tortured on arrival in Colombo. According to the complainant, there is no doubt that any Sri Lankan national of Tamil origin who has fled his country after being persecuted by government forces is more likely to be tortured if he returns to the country.

3.2 The complainant refers to a report by Amnesty International dated 1 June 1999, according to which acts of torture carried out by the security forces are reported on an almost daily basis in the context of the armed conflict with the LTTE. According to the report, the problem also extends to routine policing, with police officers regularly torturing criminal suspects. Thus, again according to the same source, despite existing legal safeguards, torture continues to be practised with relative impunity.

3.3 The complainant concludes that the argument that the persecution he had suffered was not serious enough to entitle him to asylum is worthless when set against the persecution that undoubtedly awaits him if he returns to Sri Lanka.

3.4 The complainant adds that he has been suffering from pleural tuberculosis since May 1999. He states that he received anti-tubercular treatment between May and December 1999 in the department of chest medicine at the teaching hospital of the canton of Vaud, Switzerland. According to the complainant, the doctors in this department believe that his clinical progress should be monitored over the next two years, as the medical condition from

which he is suffering must be considered serious. The complainant claims that essential emergency medical treatment might be necessary and that hospital conditions in Sri Lanka, notwithstanding the contrary view of the Swiss Appeal Commission on Asylum Matters, would not permit appropriate medical treatment.

Observations of the State party on the admissibility and merits of the communication

4.1 The State party did not challenge the admissibility of the communication and made its observations on the merits in a letter dated 21 August 2000.

4.2 The State party first of all considered the decision by the Swiss Appeal Commission on Asylum Matters.

4.3 The State party notes that, although the Commission considered the appeal to be manifestly ill-founded and hence could have been summarily rejected, it nevertheless undertook to examine it in detail.

4.4 The State party recalls that the Commission, like the Federal Office for Refugees, found that the complainant had not proved he had suffered serious harm that might give him reason to fear, objectively and subjectively, persecution if he returned to Sri Lanka. According to the State party, the complainant has not in fact established that there is a personal, concrete and serious risk that he will be subjected, if sent back to his home country, to treatment prohibited under article 3 of the European Convention on Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to the State party, it follows from the decision by the Swiss Appeal Commission on Asylum Matters that, in the light of Switzerland's international commitments, the return ("refoulement") of the complainant is lawful. The State party recalls that the Commission rejected the arguments put forward by the complainant, who cited his state of health in objecting to his refoulement.

4.5 Secondly, the State party considered the merits of the Commission's decision in the light of article 3 of the Convention and the Committee's jurisprudence.

4.6 The State party states that the complainant in his complaint merely recalls the grounds he had invoked before the national authorities. According to the State party, the complainant produces no new information that might call into question the decision of the Federal Office for Refugees of 18 August 1999 and the Commission's decision of 10 December 1999. The State party asserts that the complainant provides no explanation to the Committee of the inconsistencies and contradictions in his allegations. On the contrary, according to the State party, the complainant merely confirms them, since, for reasons unknown to the Swiss authorities, he claims to have been arrested again on 3 January 1999 by the Colombo police and then to have been brought before the court on 10 February 1999. The State party recalls that those claims were supposed to be confirmed, according to the complainant, by the Colombo police document dated 23 August 1999.

4.7 The State party finds these claims to say the least surprising, since during the internal procedure, the complainant initially stated spontaneously that he had not been arrested again by the police or the CID after April 1997. During the hearing, however, the complainant claimed to

have been arrested by the People's Liberation Organization Tamil Eelam (PLOTE) in February 1998. According to the State party, it was only in his appeal to the Commission that the complainant indicated, in a very vague way and completely contradicting his earlier claims, that he had been arrested or detained by the police or the CID on several occasions between February 1998 and his departure for Switzerland.

4.8 The State party points out that, although the document allegedly drawn up by the Colombo police is dated 23 August 1999, the complainant never said that he had been arrested in 1999 either during the above-mentioned hearings, or in his appeal to the Commission of 21 September 1999, or in his letters to the Commission dated 15 and 19 October 1999. According to the State party, it is even more surprising that the complainant did not refer to this document in his request for an extension of the 10 January 2000 deadline for his departure. The State party points out that, since this document was never produced in the course of the ordinary proceedings, the complainant could have called for a review of the facts, but had not done so. The State party points out that such a review is recognized as an effective domestic remedy within the meaning of article 22, paragraph 5 (b), of the Convention. The State party is of the view that, in any event, this document cannot be taken into account in the present case.

4.9 The State party explains that there is good reason to doubt the origin and content of this document, which, again, was never produced before the national bodies. The State party observes that it might be wondered why the complainant is afraid of being prosecuted by the police when the latter obligingly provide him with a document setting out in chronological order all the occasions on which he claims to have been arrested. According to the State party, it would be a strange police force indeed that was kind enough to provide a person it wished to arrest with the very means of avoiding arrest. The State party concludes that the 1999 arrest is obviously implausible and that the document supposedly issued by the Colombo police, produced in the form of an uncertified copy, has no probative value.

4.10 After recalling the Committee's jurisprudence and its general comment on the implementation of article 3, the State party states that, in the case under consideration, the Swiss Government entirely agrees with the grounds given by the Commission in support of its decision to turn down the complainant's application for asylum and to confirm his expulsion. With regard to article 3 of the Convention, the State party wishes to point out, by way of a preliminary remark, that according to the Committee's jurisprudence (communication No. 57/1996, P.Q.L. v. Canada), this provision affords no protection to a complainant who simply claims to fear arrest upon returning to his country. The same conclusion applies *a fortiori* to the mere risk of arrest (communication No. 65/1997, I.A.O. v. Sweden). The State party recalls that, in the present case, the complainant in fact claims that he would be arrested for not fulfilling his obligation to report to the CID office once a week.

4.11 The State party asserts that it is because the arguments were persuasive that the Commission considered the complainant's claims to be lacking in credibility. According to the State party, these arguments are not weakened by the mere fact that the complainant is now transmitting to the Committee for the first time a document which was allegedly issued by the Colombo police on 23 August 1999, according to which the complainant had been arrested again on 3 January 1999 and was wanted by the police for having failed to report to the CID office.

The State party points out that the complainant should have and could have provided this information to the Swiss authorities during the internal procedure, as an asylum-seeker is bound by a duty to cooperate. The State party finds it particularly surprising that, when the complainant appeared before the Swiss authorities he never mentioned his arrest on 3 January 1999, even though this supposedly took place shortly before he left Sri Lanka. The State party adds that the complainant also argues that he was subjected to torture while under arrest and that the Sri Lankan authorities bound and beat him. However, according to the State party, the Swiss doctors who examined the complainant and administered his anti-tubercular treatment never reported any suspected after-effects of acts of violence.

4.12 The State party explains that, quite apart from these inconsistencies, it should be pointed out that the complainant's allegations in connection with the arrest on 3 January 1999 and the arrest warrant are implausible. During the cantonal hearing, the complainant explicitly stated that, after his arrest in Colombo by the PLOTE in February 1998, he was released "on condition that he return immediately to Kilinochchi", adding that members of the PLOTE "told me not to return to Colombo". If he had returned to Colombo, the complainant would allegedly have been in danger of being "detained for longer, without being brought before a court". According to the State party, however, these assertions with regard to the arrest by the Colombo police on 3 January 1999 and, especially, the judge's order that the complainant be released on condition that he report to the CID office every Saturday clearly lack credibility.

4.13 Lastly, the State party believes that the complainant's explanations concerning the way he left Sri Lanka need, at the very least, to be treated with caution. The complainant does not explain, in particular, how he was able to leave the country from Colombo airport although wanted by the police. According to the State party, the extremely tight security controls in operation at the airport would never have allowed the complainant to check in for the flight and pass through police and border controls. The State party considers it unlikely that he could, as he claims, have been assisted by a trafficker, who allegedly told him not to speak to the customs officers and would have promised to intervene if questions were asked. According to the State party, the facts show that, on the contrary, there is no evidence that the complainant was being sought by the police on the day of his departure, on 24 or 25 March 1999.

4.14 The State party concludes that there is therefore reasonable doubt as to whether the complainant is wanted by the Sri Lankan authorities. It is also unlikely that the author would be at risk of arrest if he returned to his country. However, according to the State party, even if such a risk existed, it would not be sufficient to conclude that there were substantial grounds for believing that he would be in danger of being subjected to torture (communications Nos. 157/1996 and 65/1997).

4.15 With regard to the health grounds cited by the complainant, the State party points out that the Commission took them into account. On the basis of two medical certificates, it concluded that the basic anti-tubercular treatment had been completed and that the complainant no longer suffered from any life-threatening or health-threatening condition. According to the State party, the new medical certificate dated 6 January 2000, on which the complainant based his argument, merely confirms this conclusion. After consultations, the surgeons who saw the patient decided not to perform a surgical decortication. The State party adds that, even if an operation should prove necessary, which is not the case at present according to the above-mentioned certificate, it

could be performed in Colombo. According to the State party, the same is true of the health check-ups and any medical treatment the complainant might require. The State party states that the Commission was therefore right to conclude that the medical services available in Colombo could be considered satisfactory and able if necessary to provide any treatment needed by the complainant.

4.16 In the light of the above arguments, the State party concludes that there is nothing to suggest that there are substantial grounds for fearing that the complainant would actually be personally at risk of torture on returning to Sri Lanka. According to the State party, the complainant's allegations also fail to prove that sending him back to Sri Lanka would expose him to a real, concrete and p rsonal risk of being tortured.

Comments by the complainant on the State party's observations

5.1 The complainant points out that the contradictions and inconsistencies found in his allegations and cited by the Swiss Government to confirm the decision of the Swiss Appeal Commission on Asylum Matters should be seen in the context of the way in which he was heard by the Swiss authorities when he arrived. In this respect, the complainant states that he was seriously ill with tuberculosis and that he was in an extremely weak condition when he had to answer all the questions of the Swiss authorities. The complainant asserts that, given his condition, it is obvious that certain details might have been forgotten or badly explained and that, moreover, six months after his arrival he had needed to be hospitalized for three weeks.

5.2 The complainant then contests the arguments of the Federal Office for Refugees casting doubt on his flight from Colombo, stating that he had called on the services of a trafficker precisely to avoid police and customs controls at Colombo airport.

Issues and proceedings before the Committee

6.1 Before considering a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. In this case, the Committee also notes that all domestic remedies have been exhausted and that the State party has not contested admissibility. It therefore finds the complaint admissible. Since both the State party and the complainant have provided observations on the merits of the complaint, the Committee proceeds with the consideration of the merits.

6.2 The issue before the Committee is whether the expulsion of the complainant to Sri Lanka would violate the State party's obligation under article 3 of the Convention not to expel or return a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Sri Lanka. In reaching this decision, the Committee must take into account

all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country does not by itself constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon returning to that country. There must be other grounds indicating that he or she would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be subjected to torture in his or her specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, which reads as follows: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or supposition. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 229).

6.5 In the present case, the Committee notes that the State party has drawn attention to inconsistencies and contradictions in the complainant's account, casting doubt on the truthfulness of his allegations. It also takes note of the explanations provided by counsel in this respect.

6.6 The Committee also notes that it has not been clearly established that the complainant was wanted by the Sri Lankan police or CID or that the Colombo police document be provided as evidence was genuine, it being indeed surprising that this document, dated 23 August 1999, was never shown to the Swiss authorities, even when the complainant applied to have the 20 January deadline for his departure extended.

6.7 Furthermore, the Committee believes that there is insufficient support for the complainant's allegations of having been tortured in Sri Lanka and that, in particular, his allegations are not corroborated by medical evidence, even though the complainant received medical treatment in Switzerland shortly after his arrival.

6.8 The Committee is aware of the seriousness of the human rights situation in Sri Lanka, and of reports alleging the practice of torture there. However, it recalls that, for the purposes of article 3 of the Convention, a foreseeable, real and personal risk must exist of being subjected to torture in the country to which a person is returned. On the basis of the considerations above, the Committee is of the opinion that such risk has not been established.

6.9 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the complainant to Sri Lanka does not constitute a breach of article 3 of the Convention.

Communication No. 162/2000

Submitted by: Y.H.A. (name withheld) [represented by counsel]

Alleged victim: The author

State party: Australia

Date of communication: 14 April 2000

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2001,

Having concluded its consideration of communication No. 162/2000, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The petitioner of the communication is Mr. Y.H.A. a Somali national from the Shikal clan, currently detained in a detention centre in New South Wales and seeking refugee status in Australia. He claims that forcible return to Somalia would constitute a violation by Australia of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 20 April 2000, the Committee forwarded the communication to the State party for comments and requested, under rule 108, paragraph 9, not to return the author to Somalia while his communication was under consideration by the Committee. The State party has acceded to this request.

Facts as submitted by the petitioner

2.1 The petitioner was born on 1 January 1967 in Mogadishu. He has a son who, at the time of this application to the Refugee Review Tribunal (RRT) was living with the petitioner's father in Kenya. The petitioner's mother is dead and he has four siblings, all living in Kenya with the exception of one living in the Netherlands.

2.2. From 1980 to 1987 the petitioner lived with his family in Galkayo, in the north-east of Somalia, where he was educated and trained as a mechanic. The family then returned to Mogadishu where the petitioner worked as a shopkeeper from 1989 to 1991.

2.3 The petitioner left Somalia in 1991 because his father, who had been a police officer in the former Siad Barre Government, was being sought by the United Somalia Congress (USC) militia. In early 1991, the members of this militia came to the petitioner's family home and raped and killed his sister. The petitioner moved to Kenya, where he lived from early 1991 to late 1992, and he also spent some time there in 1994. During his time in Kenya he worked in a restaurant.

2.4 In 1992, the petitioner returned to Somalia because his wife was a member of the Hawiye clan (the same clan as the USC militia) and this offered him some protection. From 1992 to 1994, the petitioner worked for the United Nations Operation in Somalia (UNOSOM) in Mogadishu as an informer, finding out where guns were kept. On 3 October 1993, the USC, having found out that the petitioner was giving information to UNOSOM, killed the petitioner's wife and shot the petitioner, wounding him in the kidney.

2.5 In 1994, while the petitioner was at his father-in-law's house, the USC shot the petitioner in the shoulder and killed his sister-in-law. As his father-in-law was a Hawiye clan member he was able to prevent any further killing but later told the petitioner he could not protect him any longer and took him to the airport from where the petitioner flew to Kenya with his son.

2.6 The petitioner remained illegally in Kenya until 1997. Then he left for Zambia and subsequently South Africa where he bought a passport in a different name and used it to travel to Australia. The petitioner arrived in Australia on 16 July 1998 with no documents. On 28 July 1998 he applied for a protection visa to the Australian Department of Immigration and Multicultural Affairs (DIMA). On 21 August 1998, the petitioner's application was refused. The petitioner sought review of this decision by the RRT which affirmed the decision not to grant a protection visa.

2.7 The RRT expressed reservations about the veracity of the petitioner's claims but it made no finding that the events as described by the petitioner did not happen. It found that the petitioner could return to Somalia and live outside Mogadishu, in the Galkayo area in north-eastern Somalia. In making its decision, the RRT took note of independent reports that factions in the north-east and north-west of Somalia would not accept forced returnees. It also noted that the petitioner was not willing to return to any area of Somalia, including Galkayo. However, it considered that these factors did not make him eligible for refugee status.

2.8 The petitioner sought judicial review of the RRT decision in the Federal Court of Australia. On 10 September 1999, the Federal Court dismissed the petitioner's application, upon which the petitioner lodged an appeal with the Full Federal Court of Australia. On 10 March 2000, the Full Federal Court dismissed this appeal. The petitioner lodged an application for special leave to appeal from the decision of the Full Federal Court to the High Court of Australia. The petitioner notes that this is the final appellate court in Australia.

2.9 According to the petitioner, Somalia remains a failed State and a territory revealing a consistent pattern of gross and flagrant human rights abuses.[a] He says that the situation of the Shikal in Somalia is well known. Amnesty International has described the Shikal as being "vulnerable to serious abuses including arbitrary killings", and has stated that it "is opposed to the return of anyone form the Shikal clan to Somalia". He states that the facts of this case are

similar to those in the case of Elmi v. Australia,[b] where the Committee found a violation of article 3 of the Convention. The petitioner also refers to relevant United Nations bodies which have made it clear that they are opposed to the involuntary repatriation of failed asylum-seekers to Somalia.[c]

The complaint

3. The petitioner claims that, due to the previous attacks the petitioner has suffered at the hands of the USC, there are substantial grounds for believing that the petitioner would be in danger of being subjected to torture on return to Somalia, and, therefore, Australia would be in violation of article 3 of the Convention if he were returned there. The petitioner points out that according to respected sources, "a consistent pattern of gross, flagrant or mass violations of human rights", prevails in Somalia, and refers in this regard to article 3, paragraph 2, of the Convention. It is claimed that the petitioner himself would be personally at risk of being subjected to torture if returned to Somalia. He also says that his clan is a minority clan and, therefore, would be unable to protect him.

State party's observations on admissibility and merits

4.1 The State party submits that this communication is inadmissible ratione materiae on the basis that the Convention is not applicable to the factual situation submitted by the petitioner. In particular, the State party contends that the treatment the petitioner may or may not be subjected to if he is returned to Somalia does not fall within the definition of torture as set out in article 1 of the Convention. The State party submits that to be classified as torture, the given conduct must inflict "severe pain or suffering, whether physical or mental". The State party is of the opinion that, although past events are a guide to what may occur in the future, the past incidents alleged by the petitioner do not indicate that it is foreseeable that he would be subjected to torture if he returned to Mogadishu. It concedes that the political situation in Somalia makes it possible that the petitioner may face violations of his human rights, but contends that such violations will not necessarily involve the kind of acts referred to in article 1 of the Convention.

4.2 According to the State party, the petitioner alleges that he will be at risk from members of the USC and in danger because he had formerly worked as an informer with UNOSOM, but he does not allege that he would be at risk or danger of such acts as would contravene the Convention. In evidence presented to the RRT the petitioner stated that "he could be attacked by Hawiye clanspeople to extort money from him to support their militia, the USC". However, the threat of extortion does not fall within the definition of article 1 of the Convention.

4.3 According to the State party, the petitioner has not adduced substantial evidence that he is faced with a risk of torture by the USC that is over and above the risks faced by every resident of Mogadishu caught between factional fighting of armed groups. It contends that the domestic review processes expressed serious reservations as to the veracity of the petitioner's account of events, including conflicting accounts of the incident involving the death of his wife and the injury to himself. According to the State party, at the initial airport interview, the petitioner failed to provide details that either his sister had been raped and killed in 1991 or that his sister-in-law had been killed in a shooting incident in 1991 which also resulted in the petitioner being wounded. The petitioner initially stated that he had never been outside Somalia but

subsequently stated that he first left Somalia in 1991. In a statutory declaration made to the RRT on 2 September 1998 the petitioner admitted that he made a number of false statements when he arrived in Sydney. The State party also states that the RRT found it implausible that UNOSOM would employ someone who had been out of the country for some period to locate arms caches in Mogadishu. The State party also referred to the RRT's finding that the petitioner had attempted to prevent the Tribunal from investigating his case through people who have first-hand information regarding his situation since 1991.

4.4 Moreover, the State party submits that the acts the petitioner fears if he were returned to Somalia do not fall within the meaning of "torture" as defined in article 1 of the Convention because they are not acts by a public official or person acting in an official capacity. The State party accepts that "members of minority groups are subject to harassment, intimidation, and abuse by armed gunmen of all affiliations"[d] but does not accept that these are committed by, or at the instigation of, or with the consent or acquiescence of a public official or any other person acting in an official capacity, as required under article 1 of the Convention. It asserts that these are acts committed by individuals in a private capacity for reasons of personal gain.[e]

4.5 The State party refers to the Committee's View's adopted on 14 May 1999 in Elmi v. Australia,[f] case No. 120/1998, and accepts that, although some clans may operate as quasi-governmental institutions in some areas of Somalia, this must be clearly differentiated from random acts of violence committed by individuals acting in a private capacity. There is no evidence to suggest that all members of a dominant clan at all times are acting in a quasi-governmental capacity. It would also be difficult to determine whether militia are acting under specific orders at any particular time as "security forces are unreliable, unpaid, untrained for peaceful duties and often out of control".[g] To support its argument on the necessity of considering whether acts are carried out in a public or a private capacity in order to determine whether those acts constitute torture, the State party provides academic commentary and views of international and national courts and tribunals.

4.6. In addition, the State party contends that there is no evidence to suggest that the alleged acts took place as a result of either decisions made by the clan hierarchy, or orders from USC leaders. Neither is there any evidence to suggest that the alleged acts were instigated on behalf of the clan or militia, or that either the clan or militia acquiesced or had any knowledge of the alleged acts. To support this argument, the State party observes that the petitioner alleged that the rape and murder of his sister was at the instigation of the USC which was seeking members of the police force of the former regime, including the petitioner's father; this account is not consistent with a report of an assessment mission to Mogadishu undertaken in 1991.[h] The State party is of the opinion that this incident was probably a consequence of the general climate of violence described as prevalent in Mogadishu at that time, rather than the acts of persons carrying out orders by USC leaders to torture and kill families of former members of the Barre regime.

4.7 With respect to the murder of his wife and the assaults on the petitioner himself, the State party points out that the petitioner gave two versions of the incident. Previously, he said that his house was hit by a bomb during fighting between Aideed's forces (USC) and UNOSOM. Subsequently, the petitioner claimed that the attack on his home followed earlier conversations with members of the Hamiye clan regarding his father's employment with the Barre regime.

during which the Hawiye clan members stated that they wanted his house. In the event that his second recollection of events is correct, it does not appear that the individual concerned was acting in an official capacity. In addition, the petitioner does not say that either his wife or father-in-law recognized the attackers as being leaders of the clan or holding any position of authority within the clan, despite the fact that they were both members of the same clan.

4.8. With respect to the incident in his father-in-law's house where the petitioner was wounded and his sister-in-law was shot, the State party argues that although it is probable that members of the USC were under orders to arrest, torture or kill UNOSOM informants at that time, there is no explanation for why the sister-in-law - who presumably did not work for UNOSOM - was killed and the petitioner himself only wounded. If the USC militia was acting in an official capacity, the representations made by the petitioner's father-in-law would have been ignored unless he held some position of authority within the USC or the Hawiye clan. There is no evidence that this was the case.

5.1 On the merits, the State party argues that there is no evidence that the petitioner would now face a risk of torture from the Government if he had returned to Somalia on the basis of either his father's former involvement with the Barre regime or his employment with UNOSOM.[i] It states that the evidence available to Australia suggests that the new Government of Somalia, which has been elected along strict clan lines, is headed by an interim President who was himself a minister in the former Barre regime.[j] The President appointed as his Prime Minister a former member of the Barre regime who served as Minister of Industry between 1980 and 1982. The Transitional National Assembly, consisting of 245 seats, includes representatives from minority clans as well as the dominant clans in Somalia. In addition, there are currently three Shikal representatives in this Assembly who are part of the Hawiye clan allocation of representatives. These representatives were also closely linked with the former Barre regime. The fact that both the President and Prime Minister of the newly formed Government were ministers in the former regime indicates that senior members of the former regime are no longer targeted, although they might have been immediately following the downfall of the Barre regime.

5.2. The State party also refers to the interim President's address to the United Nations General Assembly on 19 September 2000, in which he extended his appreciation to the United Nations for its efforts to alleviate the plight of the Somali people over the past 10 years and described the recent creation of Somalia's National Assembly as the beginning of a new era of peace and stability.

5.3. Although the State party does not deny that the attacks on the petitioner, his wife, his sister and sister-in-law may have occurred and that at that time and immediately afterwards the petitioner may have felt particularly vulnerable to attack by USC militia, and that this fear may have caused him to flee Somalia, this is not evidence that he would now face a threat from either of the two factions of the USC. In this context, the State party adds that the leader of one of the factions is also a member of the Transitional National Assembly and has indicated that he supports the new President.

5.4 As to the petitioner's fear of torture because of his position within UNOSOM, the State party contends that there is no evidence that this was a significant position or that he was known generally as being employed by UNOSOM or contributing directly to the aims of UNOSOM. Neither is there any evidence to suggest that former employees of UNOSOM are at risk from either faction of the USC. Furthermore, in the absence of any central records kept in Somalia for almost a decade, it is difficult to ascertain how members of the USC would know about the petitioner's involvement with UNOSOM without the petitioner's own admission.

5.5 On the allegation that the petitioner is a member of a minority clan that is unable to offer him protection anywhere in Somalia, the State party observes that the petitioner did not indicate in his evidence to the Refugee Review Tribunal hearing that he feared he would be tortured because he was a member of the Shikal clan. Rather, he stated that his clan would not be able to protect him but that he could be attacked by the Hawiye clan to extort money from him to support their militia, the USC. According to the State party, this does not demonstrate that he personally would be at risk as a member of the Shikal clan.

5.6 The State party accepts that there has been a consistent pattern of gross, flagrant or mass violations of human rights in Somalia in general and that members of small, unaligned and unarmed clans, like the Shikal, have been more vulnerable to human rights violations than members of larger clans. Although there has been continued violence and upheaval, this risk is faced by the population at large and is particularly high in Mogadishu and in southern Somalia. This does not constitute evidence that the petitioner himself is personally at risk of torture. In addition, the State party states that, although the level of violence has declined since the election of the interim Government, the situation remains tense. The interim Government has incorporated many of the militia into a national police force. Although some of the faction leaders in Mogadishu have refused to recognize the interim Government, the Habr-Girdir sub-clan of the Hawiye clan supports the interim President. The faction leaders currently in south Mogadishu come from the Habr-Girdir sub-clan, as does the interim President.

5.7 The State party observes that the domestic review processes found that even if the petitioner did face a danger of torture if he was returned to Mogadishu, he would have the alternative of settling in Galkayo (north-east Somalia) where he previously resided for a significant amount of time. The domestic review processes also found that the authorities in that region accepted members of other clans, that the region was still relatively stable, and that the petitioner would have meaningful protection from any harm he claimed to fear. USC militia or its factions are not in control of this area, which is controlled by the Somali Salvation Democratic Front (SSDF). Two reports on this region have indicated that north-eastern Somalia has been an area of relative peace and stability where members of all Somali clans are welcome.

5.8 The State party submits that this finding of the domestic review procedures occurred prior to the formation of a central Government in Somalia, now established in Mogadishu. As the petitioner was reluctant to return to this part of the country, and given the new political situation as described in paragraph 5.1 above, the State party submits that it is now unlikely that there would be any reason for him to find it necessary to relocate to Galkayo rather than Mogadishu.

Petitioner's comments on the State party's submission

6.1 In response to the State party, the petitioner reaffirms his claim that he faces a substantial risk of torture in Somalia because, as a member of the minority Shikal clan, he is particularly vulnerable in the lawless conditions prevailing in the whole of Somalia. He says that the RRT accepted that he was vulnerable but rejected his claim as there was no nexus between the danger he faced and his clan membership. He submits that no such nexus is required under the Convention against Torture.

6.2 In dealing with acts of torture from so-called "non-State actors" or "quasi-State actors", it is submitted that the Committee should adopt a broad conception of the reach of State responsibility. In this regard, the petitioner points to the jurisprudence on the European Convention on Human Rights. It is not necessary, according to counsel, that the persons carrying out the acts of torture be somehow "charged with" or "authorized" by some competent organ. Article 1 of the Convention against Torture extends liability for acts of torture to include "acquiescence" of the responsible person. Furthermore, counsel argues that, as recognized in Elmi v. Australia, where there has been a breakdown of government authority, private groups practicing torture are in effect "acting in an official capacity" in the area in question and article 3 relief should therefore be available.

6.3 According to the petitioner, recent peace initiatives have not ended the conflict in Somalia. In its most recent report on the situation of human rights in Somalia, the Special Rapporteur of the Commission on Human Rights noted that Mogadishu remains divided into fiefdoms controlled by the Transitional National Government and a variety of faction leaders. He noted that inter-faction clashes often lead to civilian casualties and loss of property, and observed that there is a sense of lawlessness prevailing in the city. He claims that, as a member of a vulnerable clan, he would be particularly at risk in this climate. Even if he were forcibly returned to the north-east, as has been suggested by the State party, he would have to pass through Mogadishu and thereby be placed at risk.

6.4 Finally, the petitioner adds that he cannot be forcibly returned to Galkayo in any event, as the material before the RRT showed that forcible returnees are not accepted in that part of Somalia. In any event, his membership of the Shikal clan leaves him just as vulnerable in the north-east because, as the report to the Commission on Human Rights also noted, there continues to be serious fighting in north-eastern Somalia, particularly around Galkayo.

Issues and proceedings before the Committee

7.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the exhaustion of domestic remedies is not contested by the State party. It further notes the State party's view that the communication should be declared inadmissible ratione materiae on the basis that the Convention is not applicable to the facts alleged, since the treatment the petitioner may or may not suffer if he were returned to Somalia does not foreseeably or necessarily amount

to torture as set out in article 1 of the Convention, and would, in any event, not be inflicted by or at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity. The Committee, however, is of the opinion that the State party's ratione materiae argument raises an issue which cannot be dealt with at the admissibility stage. As the Committee sees no further obstacles to admissibility, it declares the communication admissible.

7.2 The Committee must decide whether the forced return of the petitioner to Somalia would violate the State party's obligation, under article 3, paragraph 1 of the Convention, not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In order to reach its conclusion the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 The Committee notes the petitioner's claim that he faces a real risk of being tortured if returned to Somalia on the basis of his father' position as a police officer in the previous Government, his own position with UNOSOM and his vulnerability as a member of the Shikal clan. In support of his claim, he outlines past incidents of torture directed against himself and his family. The Committee observes that the State party does not deny that these incidents may have occurred, but argues that the petitioner has not been consistent in his description of events and that these attacks were more likely to have occurred as part of the general climate of violence in Mogadishu at the time rather than as a deliberate attempt to target the petitioner for the reasons outlined by him. The Committee also observes that the petitioner has failed to explain the inconsistencies in his description of the attacks, which raise doubts with the Committee as to his credibility.

7.4 In addition, the Committee recalls that, even if the evidence of past torture provided by the petitioner were not in question, the aim of the Committee's examination of the communication is to ascertain whether the petitioner would risk being subjected to torture now, if returned to Somalia. Given the composition of the new Transitional Government, including members of the Shikal clan itself, the Committee is of the opinion that the petitioner would not now face such a risk. In light of the foregoing, and while recognizing the ongoing widespread violations of human rights in Somalia, the Committee finds that the petitioner has not established that he would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the petitioner's removal to Somalia by the State party would not constitute a breach of article 3 of the Convention.

Notes

[a] Counsel refers to the 1999 Country Report on Human Rights Practices in Somalia, Bureau of Democracy, Human Rights and Labor, United States Department of State.

[b] Case No. 120/1998 of 14 May 1999.

[c] In this context, he refers to the report on the situation of human rights in Somalia of the Special Rapporteur of the Commission on Human Rights which noted the UNHCR policy of voluntary repatriation and the "dumping" in Somalia of asylum-seekers by some Western countries, which had led to problems of safety for rejected asylum-seekers. He also refers to the opinion of the same Special Rapporteur who expressed alarm at a plan being considered which would make it difficult for Somalis to seek asylum in European Union Member States, and stated that in the absence of recognized structures in Somalia that the international community could formally call upon for human rights protection, Somalis should not be forced to return to Somalia. See E/CN.4/2000/110, para. 85

[d] United States Department of State 1999 Country Report on Human Rights Practices in Somalia, p. 10.

[e] The State party refers to the United States Department of State Country Report on Human Rights Practices of 1999 which states that "boys as young as 14 or 15 years of age have participated in militia attacks, and many youths are members of the marauding gangs known as 'morian' or 'parasites' or 'maggots'".

[f] In Elmi v. Australia, it was found that "those factions exercise certain prerogatives that are comparable to those normally exercised by legitimate Governments. Accordingly, the members of those factions can fall, for the purposes of the application of the Convention, within the phrase 'officials or other persons acting in an official capacity' contained in article 1".

[g] Comment on Somalia's quasi-governmental institutions by the Researcher on Somalia, Dr. Martin Hill, of the International Secretariat of Amnesty International in London.

[h] The report of the assessment mission to Mogadishu, Hiran Bay, Middle Shabelle and Lower Shabelle Regions from 23 February to 4 March 1991 to the Inter-NGO Committee for Somalia (United Kingdom and Kenya) states that "there are an estimated 3,500 people on the police force at the moment" and that "police were visible mainly at the airport, and sometimes on the street". The report also says that there was a significant problem of looting, killing and assaults.

[i] The State party refers to the Committee's decision in X, Y and Z. v. Sweden, case No. 61/1996, adopted on 6 May 1998, in which it stated that "past torture is one of the elements to be taken into account by the Committee when examining a claim concerning article 3 of the Convention, but ... the aim of the Committee's examination of the case is to find whether the petitioners would risk being subjected to torture now if returned".

[j] According to the State party, when questioned about the Barre regime the President stated the following "I was a member of Siad Barre's Government. Let me state that there are, right now in Somalia, three generations. The first generation of independence. ... [t]he second generation is my generation, and practically everyone of my generation had a role in 20 years of government. That was not Siad's Government, it was the nation's Government. Siad was the President, the man who was leading Somalia for 20 years. Everyone was in Somalia - intellectual or otherwise - served in one or another capacity in that administration. Not necessarily as a minister, but in any capacity."

Complaint No. 164/2000

Submitted by: L.M.T.D. (name withheld)

Alleged victim: The complainant

State party: Sweden

Date of submission of complaint: 22 March 2000

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 May 2002,

Having concluded its consideration of complaint No. 164/2000, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is L.M.T.D., a Venezuelan citizen currently residing in Sweden. She claims that her return to Venezuela following Sweden's refusal to grant her political asylum would constitute a violation of article 3 of the Convention. She is represented by counsel.

The facts as submitted by the complainant:

2.1 The complainant worked as a procurator for juveniles in the office of the Attorney-General of the Republic of Venezuela from 1988 to 1997. One of her functions was to regularize the registration of children in the civil registers so that they might later obtain an identity card. This procedure took place on the basis of an authorization by a civil court.

2.2 In 1995, the complainant discovered that some Chinese nationals had obtained Venezuelan identity cards and passports by using forged documents, such as copies of registration decisions bearing her signature and stamp and the stamp of the Civil Court. The complainant reported this fact to the Attorney-General of the Republic for the latter to institute an investigation to determine who was responsible for the forgery. On 22 February 1995, the complainant filed a complaint with Caracas Criminal Court of First Instance No. 15. In 1996, she requested a judicial or eyewitness inspection of the National Identification Office (ONI) and of the files of the Aliens' Department (DEX), where the forged documents were found. The inspection was never carried out because, according to the complainant, the heads of the two bodies in question were linked to the Convergencia political party, which received large amounts of money for granting Venezuelan nationality to Chinese nationals.

2.3 In March 1997, the complainant was dismissed from the Office of the Attorney-General of the Republic with no explanation, but still continued with the investigation. From then on, she started receiving threats by telephone and anonymous threats pushed under her door. Her daughter was the victim of a kidnapping attempt and her husband was brutally pistol whipped on the head and back. She was also warned that she had to stop investigating and filing complaints.

2.4 In August 1997 and as a result of what had happened, the complainant and her family moved from Caracas to Maracaibo. In December 1997, the complainant's car was stolen and later burned. She was also harassed by telephone and told that, if she filed any more complaints, she was the one who would be accused of being responsible for the forgeries. As a result, she and her family fled to the city of Maracay in January 1998. That was when they decided to sell everything they owned and leave the country for Sweden.

2.5 The complainant and her family applied for political asylum in Sweden on 19 March 1998. The Swedish National Migration Board rejected the application on 24 August 1998, claiming that the facts did not in any way constitute grounds for asylum in Sweden and that, in addition, the complainant could prove her innocence through legal channels. An appeal against that decision was submitted to the Aliens' Commission, which upheld the initial decision on 3 March 2000. An application for inhibition was later filed with the Aliens' Commission, but it was denied on 14 March 2000.

The complaint:

3. The complainant claims that there are substantial grounds for believing that, if she is returned to Venezuela, the persecution against her will continue and she will be prosecuted for denouncing corrupt politicians in a legal system where there is no guarantee of being able to prove that she is innocent of the forgeries. She also claims that the security forces continue to torture and ill-treat detainees both mentally and psychologically and that she is in danger of being arrested, all in violation of article 3 of the Convention.

The State party's observations:

4.1 In its observations of 28 August 2000, the State party replies to the complainant's claims in respect of admissibility and the merits. After giving a brief description of Swedish legislation relating to aliens, the State party describes how the complainant, who was born in 1958, and her husband and children entered Sweden with valid passports on 26 February 1998. They applied for asylum on 19 March 1998, claiming that they had been subjected to harassment as a result of a bribery scandal and that they were afraid to return to Venezuela. The application was turned down on 24 August 1998. The Aliens' Commission rejected the appeal on 3 March 2000.

4.2 With regard to admissibility, the State party maintains that the application should be declared inadmissible ratione materiae, for lack of proof that the complaint is compatible with the Convention, in accordance with article 22, paragraph 2, of the Convention. In this connection, the State party argues that the complainant claims that, if she is returned to Venezuela, she will be arrested, tried and sentenced to prison, without proper guarantees of a fair trial. However, according to the State party, although the complainant has referred to article 3 of the Convention, she has not specifically stated that she will be subjected to torture if she returns

to Venezuela. Rather, when the complainant was asked about prison conditions in Venezuela during her interview with the National Immigration Department official, she said that the police did not use torture. The State party maintains that the facts which may cause the complainant to be afraid of being returned to Venezuela do not come within the definition of torture contained in the Convention.

4.3 With regard to the merits of the complaint, the State party draws a distinction between the general human rights situation in Venezuela and the personal situation of the complainant if she were returned to Venezuela.

(a) The State party affirms that, with regard to the general human rights situation in Venezuela, although the human rights situation continues to be poor in some respects, there are no grounds for stating that there is a consistent pattern of gross, flagrant or mass violations of human rights. The State party recalls that, although some reports of human rights violations in Venezuela, such as the 1999 United States State Department report on human rights in Venezuela, the 1999 Human Rights Watch report on Venezuela and the 2000 Amnesty International report, refer to extrajudicial executions by the army and the police, as well as to an increase in cases of torture and ill-treatment of detainees, women detainees are held in separate prisons, where conditions are better than in prisons for men. The State party also reports that, in February 1999, the administration of President Chávez re-established the articles of the Constitution relating to the prohibition of arrests without a warrant and to freedom of movement. The State party lastly recalls that such reports refer to torture, indicating that the security forces continue to torture and ill-treat detainees both physically and mentally. However, although the general human rights situation in Venezuela leaves much to be desired, particularly with regard to conditions of detention, that does not constitute sufficient grounds for concluding that a person will be tortured if he or she is returned to Venezuela.

(b) With regard to the complainant's personal situation, the State party recalls that, unlike many other authors of complaints submitted to the Committee, the complainant has not belonged to any party or political organization. Her complaint is based on the fact that she was wrongfully suspected of being involved in a bribery scandal, for which she could be sentenced to imprisonment if she returned to Venezuela, in poor conditions of detention. Moreover, she does not claim that she was ever subjected to torture in the past and, more importantly, has not explicitly demonstrated how she would be subjected to torture if she returned to Venezuela. The State party also points out that Venezuela has not requested the complainant's extradition and that there are no grounds for believing that the Venezuelan authorities intend to imprison her. On the contrary, the State party was able to ascertain that the head of the ONI, the primary suspect in the bribery scandal, has not been arrested.

4.4 The State party reports that, in their decisions of 24 August 1998 and 14 March 2000, respectively, the National Migration Board and the Aliens' Commission argued that the fact of being in danger of being tried for a crime or of being subjected to harassment in Venezuela is not a reason for granting asylum in Sweden. Both bodies also ascertain that, if she was tried, the complainant would have a fair trial and would have a good chance of winning her case. The State party adds that it does not question the complainant's testimony about the bribery scandal and the subsequent harassment. However, it does trust the arguments put forward by the two bodies.

Comments by the complainant:

5.1 In her comments of 27 March 2002, the complainant recognizes that the State party does not contest her statements on factual grounds, but rather in respect of the fact that she would run the risk of being subjected to torture if she returned to Venezuela. The complainant nevertheless maintains that there is a clear danger that she would be put on trial and given a long prison sentence and that there is therefore also a danger that she would be subjected to torture in a Venezuelan prison, in violation of article 3 of the Convention.

5.2 With regard to the arguments of the State party that the complaint should be declared inadmissible ratione materiae, the complainant says that, when she left her post, she lost the protection of her status as a civil servant and became exposed to harassment and threats by the ONI and the DEX, where she was told she would be accused of having forged the documents herself. The complainant argues that, since the threats come from persons who are still in high political office, it is very doubtful whether she would receive a fair trial. She adds that the decisions taken by the State party in this case are based on erroneous information, so that they fail to distinguish between the Attorney-General on the one hand and the ONI and the DEX on the other or to take account of the fact that the head of the ONI was at no time her supervisor. In addition, while the complainant acknowledges that she had stated during questioning by the officials of the National Migration Board that torture was not permitted in Venezuela, she had also stated that she feared torture and the conditions in Venezuelan prisons.

5.3 With regard to the State party's arguments regarding the merits of the case, the complainant says that she has substantial grounds for fearing for her safety and that the State party's argument that the general conditions in a country do not constitute sufficient grounds for determining whether a person returning to the country would be in danger of being subjected to torture is unconvincing. Moreover, despite the so-called improvements introduced by President Chávez, the degree of corruption within the Venezuelan administration is common knowledge. What is more, the complainant continues, the State of Venezuela itself has established that more than one person a day is tortured.

5.4 The complainant rejects the State party's arguments that she was never a member of any political party or politically active: while she may have been only a civil servant, the fact that those responsible for the forgeries were political officials entailed political implications which give her substantial grounds for fearing for her safety on returning to the country. With regard to the State party's argument that the head of ONI has not been arrested, the complainant says that is not a point that can be used as evidence that she will be safe, since the powerful always protect the powerful.

5.5 Lastly, the complainant reiterates that the current situation in Venezuela following the coup d'état against President Chávez makes her more fearful than ever for her safety if she returns to the country.

Issues and proceedings before the Committee:

6. Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect, the Committee has ascertained, as it is required to under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the exhaustion of domestic remedies is not contested by the State party. It further notes the State party's view that the complaint should be declared inadmissible ratione materiae on the basis that the Convention is not applicable to the facts alleged, since the acts the complainant will allegedly face if she is returned to Venezuela do not fall within the definition of "torture" set out in article 1 of the Convention. The Committee is, however, of the opinion that the State party's argument raises a substantive issue which should be dealt with at the merits and not the admissibility stage. Since the Committee sees no further obstacles to admissibility, it declares the communication admissible and, since both the complainant and the State party have provided observations on the merits of the communication, the Committee will proceed to examine those merits.

7. In accordance with article 3, paragraph 1, of the Convention, the Committee must decide whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if she returned to Venezuela. In order to reach its conclusion, the Committee must take account of all relevant considerations, in accordance with article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim is, however, to determine whether the individual concerned would personally be in danger of torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether a person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must be adduced to show that the individual concerned would be in danger. In the present case, the Committee must determine whether the expulsion of the complainant to Venezuela would entail a *foreseeable, real and personal* risk of being arrested and tortured.

8. The Committee notes the State party's arguments that, although the human rights situation in Venezuela remains poor, particularly with regard to prison conditions, there are no grounds for stating that a consistent pattern of gross, flagrant or mass violations of human rights exists in Venezuela. The Committee also notes the exchange of arguments between the complainant and the State party concerning the alleged risk to the complainant of being subjected to torture and considers that the complainant has not provided sufficient evidence to show that she runs a foreseeable, real and personal risk of being tortured in Venezuela.

9. The Committee agrees with arguments put forward by the State party and takes the view that the information submitted does not show substantial grounds for believing that the complainant would personally be in danger of being subjected to torture if she was returned to Venezuela.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the complainant to Venezuela does not constitute a violation of article 3 of the Convention.

Communication No. 166/2000

Submitted by:	B.S. (name withheld) [represented by counsel]
Alleged victim:	The petitioner
State party:	Canada
Date of communication:	22 April 1999

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2001,

Having concluded its consideration of communication No. 166/2000, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the petitioner and the State party,

Adopts it Views under article 22, paragraph 7, of the Convention.

1.1 The petitioner is B.S., an Iranian national, currently residing in Vancouver, Canada. He claims that his removal to the Islamic Republic of Iran would entail a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Canada. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the communication to the attention of the State party on 21 July 2000. At the same time, acting under rule 108, paragraph 9, of its rules of procedure, the Committee requested the State party not to expel the petitioner to the Islamic Republic of Iran while his communication was being considered. The State party acceded to this request.

The facts as submitted by the petitioner

2.1 On 2 August 1990, the petitioner arrived in Canada. He was granted refugee status by decision of the Immigration and Refugee Board on 11 January 1996.

2.2 Since 1992, the petitioner was convicted of various criminal offences, including theft, uttering threats, assault, will to cause personal injury, false pretences, sexual assault, obstructing a peace officer and altering a forged document. Restraining orders were issued against the

petitioner in 1997 and 1998. On 15 January 1999, the Minister of Citizenship and Immigration's delegate issued an opinion pursuant to sections 70 (5) and 53 (1) of the Immigration Act that the petitioner constitutes a danger to the public in Canada due to the number and nature of criminal convictions acquired by the applicant in Canada since 1992. A deportation order was issued against the petitioner on 1 March 1999.

2.3 On 15 April 1999, the petitioner filed an application for leave and judicial review of the decision to remove him to Iran. The Federal Court dismissed the application on 12 July 2000. The Federal Court had denied his application for leave and for judicial review of the decision that he constituted a danger to the public on 14 July 1999. Counsel submits that all effective domestic remedies have been exhausted and that the petitioner expects his deportation any time.

2.4 The petitioner alleges that he fled persecution in Iran in July 1990. He submits that, in early 1985, while in high school, he had been arrested and questioned by Revolutionary Guards about his participation in political discussions. The Petitioner was held for eight days during which he was beaten, punched, kicked, and tortured. In September 1984, the petitioner's family home was raided by Revolutionary Guards after siblings left Iran because of perceived involvement with the pro-monarchist movement. The petitioner alleges that he was held for 18 days and that his sister, his mother, and he himself were beaten. In January 1985, while serving in the military, the petitioner was suspected of political activity and detained and questioned by an officer of the Ideological Religious Department of the Army for two days. The petitioner submits that he was forced to witness the execution of six soldiers convicted of opposing the regime and its war efforts. In April 1985, the petitioner was wounded by a grenade and released from the army, after treatment in a military hospital, in February 1986. In October 1989, the petitioner was arrested by Revolutionary Guards, handcuffed and taken to the offices of the branch of police that deals with anti-revolutionary offences (Komiteh), where he was allegedly beaten and held for one month. In March and April 1990, the Komiteh again detained the petitioner for 24 hours each time. After the second arrest, the petitioner was ordered to report daily to the Komiteh office. The petitioner submits that every time he reported to the office, he was afraid that the police officers would kill or torture him. After four or five days, the petitioner fled to Bandar Abbas, obtained a false passport and fled Iran by plane. In 1993 a summons was published in the Iranian newspaper Khabar indicating that the petitioner had been charged with escape and was requested to report to the Investigation Branch of the General Prosecutor's Office in Shiraz.

2.5 The petitioner submits that he fears for his life and safety if he is returned to Iran. Furthermore, the Iranian authorities would be alerted to his return, because the petitioner would require travel documents issued by Iran. The petitioner alleges that the State party did not assess the risks he faced upon his return. The petitioner alleges also that he has never been assessed for determining the likelihood that he will commit more crimes.

The complaint

3. The petitioner claims that his forced return to Iran would violate articles 3 and 16 of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment. He argues that there are substantive grounds for believing that he would be in danger of being subjected to torture when deported, because he had been tortured before he left Iran and because

he would probably be detained and severely punished for his refusal to comply with the daily reporting obligations of the Komiteh. The petitioner claims further that refugees and refugee claimants are at risk of torture upon their return to Iran.

State party's observations on admissibility and merits

4.1 The State party submits that the petitioner has not exhausted all effective domestic remedies. The State party argues that the petitioner has failed to seek a ministerial exemption on humanitarian and compassionate grounds under subsection 114 (2) of the Canadian Immigration Act and section 2.1 of its Immigration Regulations. This remedy would have enabled the petitioner to apply to the Minister on Citizenship and Immigration at any time for an exemption from the requirements of the immigration legislation or for admission to Canada on compassionate or humanitarian grounds. The State party recalls the earlier findings of the Committee that humanitarian and compassionate applications are an available and effective domestic remedy.[a]

4.2 The State party submits further that the petitioner's claim of violations of his rights established by articles 3 and 16 of the Convention are not substantiated. The petitioner did not establish prima facie that there are substantial grounds for believing that his deportation would have the foreseeable consequence of exposing him to a real and personal risk of being tortured if returned to Iran. The isolated past incident of torture does not establish such a risk of torture upon his return. The State party argues that the petitioner has only alleged to have been tortured on occasion of his first detention in 1984, but not in any of the subsequent detentions. His last two detentions lasted only for 24 hours and the petitioner was released with only an obligation to report daily. The State party concludes that the treatment of the petitioner followed a pattern of decreasing severity and that today he is not of interest for the authorities in Iran.

4.3 The State party submits that given the Committee's interpretation of article 3 as offering absolute protection irrespective of an individual's past conduct, the determination of the risk must be particularly rigorous. In this regard, the State party submits that a risk assessment was conducted when the Minister of Citizenship and Immigration's delegate considered whether the petitioner was a danger to the public and should be removed from Canada. A new assessment by the Department of Citizenship and Immigration in preparation of the response of the State party to the Committee confirmed the earlier finding that the petitioner is not at risk of torture if removed to Iran. The State party argues, in this regard, that the Committee should not substitute its own findings for those of the national proceedings since they did not disclose abuse of process, bad faith, manifest bias or irregularities. It is for the national courts of the States parties to evaluate the facts and evidence in a particular case and the Committee should not become a "fourth instance" competent to re-evaluate findings of fact or review the application of domestic legislation.

4.4 With regard to the risk of being tortured upon his return, the State party submits that the facts in the present petition are similar to those in communication No. 36/1995, X. v. The Netherlands. The petitioner has not provided any medical evidence with regard to the alleged ill-treatment in 1984. The State party argues further that the petitioner did not indicate that, after September 1984 or because of his departure, any member of his family in Iran were victims of retribution by Iranian authorities because of the petitioner's alleged political opinion.

The State party submits, in addition, that the summons in itself does not establish that the petitioner would be at risk of being tortured. The "notice to appear" acts, in criminal cases, as an official notification that the participation of the person named is required in an investigation, either as a witness or an accused. Nothing supports the conclusion that the summons was issued for alleged political crimes. Furthermore, the petitioner has not provided any evidence that the Iranian authorities have issued a warrant for his arrest due to his failure to respond to the summons, nor did he indicate that he is still obligated to report under the summons.

4.5 With regard to the general situation in Iran, the State party submits that important changes have occurred since 1984, including the establishment of a Department of Human Rights within the Ministry of Foreign Affairs and of the Islamic Human Rights Commission and the election of Mr. Khatami as President. Furthermore, the latest Canadian Immigration and Refugee Board's publication on Iran has explained that the safety of return depends on the interpretation of general governmental policy by local authorities and, therefore, the mere allegation of a risk of torture because the petitioner is a refugee is insufficient to establish that he would personally face a risk of torture. The State party argues that the existence of a pattern of human rights violations in a country is not sufficient to determine that a particular person would be in danger of being subjected to torture.

Comments by the petitioner

5.1 The petitioner submits that a decision to grant a minister's permit or an exemption under section 114 (2) of the Immigration Act is entirely discretionary and executive. He would not be eligible for landing in Canada or given the required minister's permit because of his convictions for sexual assault. The petitioner submits that the State party would not exercise its discretion in his favour. The only decision the petitioner could apply to review would be the decision to remove him to Iran. He filed a judicial review on this very issue, but the Federal Court denied his application. Therefore, counsel argues that the remedies suggested by the State party cannot be regarded effective domestic remedies.

5.2 The petitioner further submits that the cases referred by the State part are either easily distinguishable from the present case or entirely off the point. He submits that in P.Q.L. v. Canada,[b] the Committee found that all domestic remedies had been exhausted despite the fact that the petitioner could have made an application for humanitarian and compassionate relief.

5.3 The petitioner submits that he satisfies the factors listed in the Committee's general comment on article 3. Furthermore, the Committee should have no confidence in the accuracy of the original risk assessment as the process did not involve an independent decision-maker, an oral hearing, rules of evidence or, at the time of the decision in the present case, written reason. The second risk assessment was made without the knowledge or participation of the petitioner and relies almost entirely on the research conducted by another office of the State party's immigration office.

5.4 The petitioner submits that the Convention Refugee Determination Division accepted the allegations of torture set out in the petition. The petitioner is a Convention refugee and was found to have a well-founded fear of persecution in Iran. The conclusion that the summons was,

in fact, a "notice to appear" is unreliable, since the State party relies on information obtained during a telephone interview with an unnamed lawyer in Tehran, who, apparently, did not see the summons. The petitioner further asks the Committee to consider what treatment he will receive should the Iranian authorities discover that he was convicted of sexual assault in Canada.

5.5 With regard to the general situation of human rights in Iran, the petitioner points to reports by Human Rights Watch in 1999 and the United States Department of State in 2000 and submits that while there have been some potentially positive developments, little has changed to date and human rights conditions may have actually deteriorated.

Issues and proceedings before the Committee

Examination of admissibility

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee notes that the State party considers the communication inadmissible for lack of exhaustion of domestic remedies. In its risk opinion of 11 August 2000, the Department of Citizenship and Immigration denied a risk of torture if the petitioner is removed to Iran; the Committee notes that the same governmental body would determine a decision on a humanitarian or compassionate application or a minister's permit. The Committee notes further that the petitioner's applications for leave and judicial review of the decisions to remove him to Iran and that he constitutes a danger to the public had been denied by the Federal Court; the same could would be responsible for reviewing a decision on a humanitarian or compassionate application or a minister's permit. Therefore, the Committee finds that, in the petitioner's situation, a humanitarian or compassionate application under section 114 (2) of the Immigration Act or a minister's permit would not constitute a remedy likely to bring relief, which should still be exhausted for purposes of admissibility. The Committee, therefore, considers that the conditions laid down in article 22, paragraph 5 (b), of the Convention have been met.

6.3 The Committee notes that the State party considers the communication inadmissible for lack of sufficient substantiation. The Committee is of the opinion that the State party's arguments raise only substantive issues, which should be dealt with at the merits and not the admissibility stage. Since the Committee sees no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

7.1 The issue before the Committee is whether the removal of the petitioner to the Islamic Republic of Iran would violate the obligation of Canada under article 3 of the Convention not to expel or return a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the alleged victim would be in danger of being subjected to torture upon return to Iran. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the termination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 In the present case, the Committee notes that the petitioner has claimed that, during his first detention in early 1985, he was tortured. Although not explicitly corroborated by medical evidence or detained submission by the petitioner, the Committee is prepared to consider that the petitioner may have been maltreated during his first detention. The Committee also notes that the petitioner has not claimed that he was tortured during his subsequent detentions. Finally, the Committee notes that the periods of the two latest detentions in 1990 were short, that the petitioner has not claimed that he was ever an active political opponent and that there is no indication that he is being sought by the authorities in Iran at the present time or would be at a particular risk of being tortured for reason of his Canadian criminal record. Therefore, the Committee considers that the petitioner has not substantiated his claim that he will be personally at risk of being subjected to torture if he is returned to Iran.

7.4 With regard to the alleged violation of article 16 of the Convention, the Committee notes that article 3 of the Convention does not encompass situations of ill-treatment envisaged by article 16, and further finds that the petitioner has not substantiated a claim that he would face such treatment upon return to Iran as would constitute cruel, inhuman or degrading treatment or punishment with the meaning of article 1 of the Convention.

Conclusions

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of B.S. to the Islamic Republic of Iran, on the basis of the information submitted, would not entail a breach of articles 3 and 16 of the Convention.

Notes

[a] The State party makes reference to P.S.S. v. Canada, case No. 66/1997; R.K. v. Canada, case No. 42/1996; L.O. v. Canada, case No. 95/1997.

[b] Case No. 57/1996.

Communication No. 175/2000

Submitted by:	S.T. (name withheld) [represented by counsel]
Alleged victim:	The author
State party:	The Netherlands
Date of communication:	27 November 2000

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2001,

Having concluded its consideration of communication No. 175/2000, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1.1 The petitioner is Mr. S.T., a citizen of Sri Lanka, born on 3 January 1979, currently residing in a shelter for asylum-seekers in the Netherlands. He claims that his forcible return to Sri Lanka would constitute a violation by the Netherlands of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 5 December 2000, the Committee forwarded the communication to the State party for comments and requested, under rule 108, paragraph 9, of the Committee's rules of procedure, not to return the petitioner to Sri Lanka while his petition was under consideration by the Committee. The State party acceded to this request.

Facts as submitted by the petitioner

2.1 The petitioner is a Tamil from the area of Jaffna in the north of Sri Lanka. For two months in 1994, he claims to have worked for the Liberation Tigers of Tamil Eelam (LTTE) in an auto-repair shop in Killinochi. During this time he also took care of wounded and distributed food supplies.

2.2 In 1996, he moved to Vavuniya. In April 2000, there was an attack by the LTTE on a camp used by the paramilitary organization PLOTE. The petitioner, along with many others in the area, was detained by PLOTE forces after this incident. He was allegedly tortured using hot instruments which left scars on his body. He did not bring this incident, nor the fact that he had scars as a result of it, to the attention of the Dutch authorities until his appeal.

2.3 On 10 October 2000, the petitioner was detained for one day by PLOTE, interrogated regarding his involvement with the LTTE and assaulted.

2.4 On 15 October 2000, he was arrested and detained by the Sri Lankan army for one day. He was allegedly kicked, hung upside down and beaten. He allegedly still has pain in his stomach from this incident, particularly when he bends over, but he bears no scars. A member of his family intervened and - after payment - he was freed. Upon release he went to stay with his aunt.

2.5 On 17 October 2000, a PLOTE soldier called at the petitioner's home inquiring about his whereabouts. On 24 October 2000, the petitioner travelled to Colombo.

2.6 On 25 October 2000, because of the incidents of 10 and 15 October, the petitioner left Sri Lanka and on 26 October 2000 arrived in the Netherlands, having passed through another country. The petitioner does not know which country he passed through. When he arrived in the Netherlands he called his sister, who told him that the Sri Lankan army and PLOTE were again making inquiries about his whereabouts.

2.7 On arrival in the Netherlands, the petitioner applied for asylum, whereupon he had his first interview with the Immigration and Naturalization Service (IND), which is under the responsibility of the State Secretary for Justice. On the basis of this interview, and with reason to believe that the application was unfounded, the IND decided to deal with the asylum request in an accelerated procedure. The petitioner was, however, detained while his application was being considered. He was released from detention on 26 February 2001, and since then has been residing in a shelter for asylum-seekers.

2.8 On 27 October 2000, the petitioner had a second interview with the IND. On 28 October 2000, his request for asylum was refused on the grounds that it was manifestly unfounded. On the same day, the petitioner's lawyer lodged an appeal against this decision and against the decision to keep him in custody. By judgement of 13 November 2000, The Hague District Court declared the appeal unfounded. According to counsel, this decision was unfair for the following main reasons:

(a) The court indicated that the petitioner's scars, alleged to have been caused in April 2000 but not mentioned by the petitioner or his lawyer until the appeal hearing, did not prove that the petitioner would be personally at risk of torture, as the incident had occurred as part of a general inquiry into the death of PLOTE soldiers. Counsel, however, contends that scars on one's body constitute a risk factor, since they can cause suspicion of LTTE involvement. Counsel explains that the incident in April 2000 was not mentioned prior to the

appeal as it was not because of these incidents, but the incidents in October, that the petitioner had fled Sri Lanka. Apparently, in his interview with the Ministry the petitioner had been asked what had made him flee;

(b) Counsel also submits that such misunderstandings are unavoidable when the accelerated procedure is employed. He says that this procedure, which allows an asylum application to be considered in 48 hours from the time of arrival and during which the exhausted asylum-seeker is detained with little privacy and spends only three hours with a legal adviser after the first interview with the Ministry, with inevitable problems of interpretation, is obviously not conducive to receiving a correct version of the facts of the case from the asylum-seeker.

The complaint

3. Counsel claims that, in view of the earlier treatment received by the petitioner at the hands of PLOTE and the Sri Lankan army, there are substantial grounds for believing that he would be personally in danger of being subjected to torture on return to Sri Lanka and, therefore, the Netherlands would be violating article 3 of the Convention if he were returned there. Counsel points out that according to respected sources, "a consistent pattern of gross, flagrant or mass violations of human rights" prevails in Sri Lanka, and refers in this regard to article 3, paragraph 2, of the Convention. Counsel also claims that given the human rights situation in Sri Lanka, it is inappropriate to decide on such cases in an accelerated procedure.

The State party's observations on admissibility and merits

4.1 On 1 June 2001, the State party submitted its comments on the admissibility and merits of the communication. The State party does not contest the admissibility of the communication.

4.2 As to the merits, the State party begins by describing the refugee determination process in the Netherlands. Asylum applications are dealt with by the IND. If an application for admission to the country as a refugee can be assessed within 48 hours, it is dealt with at an application centre, of which there are four. Asylum-seekers are interviewed with the aid of a questionnaire, which contains no questions regarding the applicant's reasons for seeking asylum. An interpreter is also made available if necessary.

4.3 The next step consists of an in-depth interview prior to which the applicant has an opportunity to prepare with the assistance of a legal adviser for two hours. If the preparation for the second interview takes more than 2 hours the 48-hour time limit for reaching a decision is extended commensurately. The second interview focuses mainly on the reasons for leaving the country of origin. The applicant is given three hours to correct or add information to the report of this interview, with the assistance of his/her legal adviser. This period may also be extended if necessary. Subsequently, an officer from IND takes a decision on the application.

4.4 The State party submits that to assist IND officials in assessing asylum applications, the Minister of Foreign Affairs regularly issues country reports on the situation in countries of origin. In drawing up these reports, the Minister makes use of published sources and reports by non-governmental organizations, as well as reports by Dutch diplomatic missions in the countries of origin.

4.5 The State party states that asylum-seekers staying at an application centre have access to medical care. Basic facilities are also available at such centres, including a dormitory, daytime activities, and hot and cold meals. If an application is refused the asylum-seeker may request the Minister of Justice to review the decision and then appeal to the District Court. In cases where the individual has been deprived of his/her liberty or whose liberty has been restricted, the petitioner may lodge an appeal immediately with the District Court.

4.6 The State party submits that the current policy on asylum-seekers from Sri Lanka is based on the country reports of the Minister for Foreign Affairs which describe developments there. The State Secretary for Justice concluded from this report that the return of rejected asylum-seekers is still a responsible course of action. Though the ethnic conflict in Sri Lanka did intensify significantly in October/November 1999, creating a very unstable situation in the north and east of the country, in government-controlled areas Tamils can still find alternative places of residence.

4.7 The State party also states that UNHCR takes the view that asylum-seekers from Sri Lanka whose applications for asylum are refused after careful consideration can be returned to their country of origin. According to the State party, the Minister's country report of 22 August 2000 indicates that this position has not changed. In addition, the State party quotes from the Minister's report of 27 April 2001 which discusses the risk of detention, prolonged or otherwise, that Tamils with scars are exposed to. It states: "All sources consulted say that external scars can prompt further interrogation, but not on their own .... None of the sources consulted was of the opinion that a scar would constitute a risk factor for someone who had the necessary documents and a credible reason for being in Colombo ..."

4.8 The State party refers to the Committee's jurisprudence that an individual must provide specific grounds indicating that he/she would be personally at risk of being tortured if returned to his/her country.[8] The State party contests the allegation that the petitioner would be so at risk. It states that the petitioner has failed to demonstrate that he would be under suspicion by either the authorities or PLOTE, especially since his alleged work for the LTTE took place more than seven years ago. The State party does not consider it plausible that the petitioner would now encounter problems as a result of these alleged activities.

4.9 The State party argues that after his arrest by PLOTE and the Sri Lankan army in October 2000, he was released on both occasions after only one day. The State party finds it implausible that the petitioner would have been released after such a short time if he had been suspected of being involved with the LTTE. In addition, the State party finds it significant that the petitioner travelled to Colombo and then to the airport with the permission of the authorities after being held in detention in October 2000 and being checked twice during this trip without any difficulties from the authorities. The petitioner then left the country using his own authentic passport. This sequence of events, it is submitted, does not suggest that the Sri Lankan authorities bear any ill-will towards the petitioner personally or suspect him of being involved with the LTTE.

4.10 The State party further submits that the petitioner's statement that due to the brevity of the procedure at the application centre he was unable to discuss his scars, does not detract from the correctness of the decision on the application for asylum. It is of the opinion that the

procedure provides sufficient guarantees that an application for asylum will be dealt with carefully, as described from paragraphs 4.2 to 4.5 above. With respect to the assessment of the petitioner's case, the State party submits that he prepared for the second interview with the assistance of a legal adviser, that it was made clear to him that he should disclose all information relevant to his application, and that he was notified of the importance of the report of this interview to the asylum procedure and told not to withhold any information relating to his application for asylum. During this interview, the petitioner was specifically asked if he had scars from the maltreatment he had undergone and he responded in the negative. The petitioner discussed the report of the second interview with his legal adviser for more than three hours, whereupon corrections and additions to the report were submitted. These corrections and additions made no mention of the alleged arrest in April 2000 nor of scars obtained as a result of maltreatment during that arrest. Thus, the State party is of the opinion that the petitioner was sufficiently notified of the necessity of making a complete statement, and that his asylum application was dealt with carefully at the application centre.

4.11 Further on the issue of the petitioner's scars, the State party is of the view that the petitioner has not demonstrated that he was detained and maltreated in April 2000 and that his scars are a result of this maltreatment. These claims have not yet been corroborated by means of a medical report, and it would not be unreasonable, the State party submits, to expect such a report, given the duration of the petitioner's stay in the Netherlands. The State party also points out that it has not been established that the alleged scars gave rise to suspicion of involvement in the LTTE during the two alleged arrests in October 2000, and that the petitioner himself was not of the opinion that the scars constituted a risk factor, since his alleged arrest and maltreatment in April 2000 were not the reason for his departure from Sri Lanka.

4.12 The State party also adds that in a letter dated 1 February 2001, the petitioner was given an opportunity to submit another application for asylum, in which the statements regarding his arrest in April 2000 could have been included. He would have been allowed to remain in the Netherlands pending the results of this application. The petitioner did not make use of this opportunity.

Petitioner's comments on the State party's submission

5.1 In his response on 24 July 2001 to the State party's submission the petitioner reiterates the claims made in the initial submission, including the claim about the unfairness of the accelerated asylum procedure. In this regard, he also submits that although a legal adviser may be present at the first interview he cannot participate by asking questions himself nor assist the asylum-seeker preparing for this interview. In practice, the legal adviser has no time even to attend the first interview. This is very important, as it is after the first interview that the decision is made whether to deal with the case by the accelerated procedure and whether the asylum-seeker will be kept in detention. The petitioner further states that he had three different lawyers acting for him at different times and that neither of his first two lawyers was familiar enough with the situation in Sri Lanka to ask him the appropriate questions, including a question as to the possibility of scars on his body. It was only the petitioner's third lawyer who recognized the importance of this issue in Sri Lanka.

5.2 The petitioner contests the State party's view of the general human rights situation in Sri Lanka. He questions the sources referred to in the Ministry's report of July 2000 and states that the statement in the report that the situation gives cause for concern is an understatement. He also refers to a report by UNHCR which states that if Tamil asylum-seekers with scars are returned to Sri Lanka they may be more liable to be detained by the security forces and taken for rigorous questioning and possibly ill-treatment. The petitioner also refers to other reports from international organizations to support his view that the presence of scars on the body of returned Tamils to Sri Lanka puts them at particular risk. He states that if returned to Colombo he runs the risk of an identity and background check as he does not have a valid reason for wanting to stay in Colombo, has no police registration in Colombo and does not have a National Identity Card.

5.3 On the State party's point that if the petitioner had been a suspect he would not have been able to travel to Colombo and flee the country, having been checked twice by the authorities on an authentic passport, he states that there is no evidence that the authorities have a central registration system of all those suspected of involvement with the LTTE. He says also that this fact was confirmed by the July 2000 report of the Ministry for Foreign Affairs.

5.4 On the State party's point that a second asylum application could have been lodged, he states that this would have been pointless as the District Court was informed about his scars and still decided that there was no risk involved in removing him to Sri Lanka. Thus, there were no new facts or circumstances to present on his behalf. He goes on to say that he did show his scars to the Court, including the prosecution, and therefore a medical report is unnecessary.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the State party has not contested the admissibility of the communication. As the Committee sees no further obstacles to admissibility, it declares the communication admissible and proceeds immediately to the consideration of the merits.

6.2 The Committee must decide whether the forced return of the petitioner to Sri Lanka would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In order to reach its conclusion the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.

Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.3 The Committee has noted the petitioner's claim that he is in danger of being subjected to torture if he is returned to Sri Lanka due to his previous involvement with the LTTE, that he has allegedly already been maltreated twice by the authorities, and that he has scars on his body which the authorities would likely assume to have been caused by fighting for the LTTE. It has also considered the claim that, because of the brevity of the accelerated procedure, the petitioner was prevented from informing the authorities early on in the procedure that he had scars from earlier maltreatment and that this information may have allowed the authorities to consider his application more favourably. The Committee has also noted the State party's description of the procedure, its detailed account of the measures in place, including regular contact with a legal adviser and the possibility of appeal, to allow for due process of the asylum applications. It also notes that the Court of Appeal did consider the question of the petitioner's scars and that it was not solely on this issue but on a consideration of all the facts at its disposal that the Court decided not to grant asylum.

6.4 Although the State party appears to concede that the petitioner was arrested and detained by the authorities twice in October 2000, the Committee notes that it was not of the view that the petitioner is suspected of involvement with the LTTE, in view of the fact that he was held for only one day on each occasion of his arrest and was never actually a member of this organization. The Committee observes that the petitioner does not contend that he was a member of the LTTE, nor does he contend that he was involved in any political activity. In addition, the Committee notes that the petitioner only worked for two months for this organization, six years prior to his first arrest. In the Committee's view, the petitioner has not alleged any other circumstances, other than the presence of scars on his body, which would appear to make him particularly vulnerable to the risk of being tortured. For the above-mentioned reasons, the Committee finds that the petitioner has not provided substantial grounds for believing that he would be in danger of being tortured were he to be returned to Sri Lanka and that such danger is personal and present.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the petitioner's removal to Sri Lanka by the State party would not constitute a breach of article 3 of the Convention.

Notes

[a] The State party refers to A. v. The Netherlands, case No. 91/1997, Decision adopted on 13 November 1998, E.A. v. Switzerland, case No. 28/1995, Decision adopted on 10 April 1997, and K.N. v. Switzerland case No. 94/1007, Decision adopted on 15 May 1998.

Complaint No. 177/2001

Submitted by: H.M.H.I. (name withheld by decision of the Committee)

Represented by: Mr. Simon Jeans

State party: Australia

Date of complaint: 12 December 2000

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 1 May 2002,

Having concluded its consideration of complaint No. 177/2001, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts its Decision under article 22, paragraph 7, of the Convention.

Decision

1.1 The complainant is Mr. H.M.H.I. (name withheld by decision of the Committee), a Somali national born in Somalia on 1 July 1960. The complainant alleges that his proposed expulsion to Somalia would violate article 3 of the Convention. The complainant is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 25 January 2001. At the same time, the State party was requested, pursuant to rule 108 of the Committee's rules of procedure, not to expel the complainant to Somalia while his complaint was under consideration by the Committee. On 20 September 2001, the State party informed the Committee that the complainant would not be removed until the Committee had considered the complaint.

The facts as submitted by the complainant

2.1 The complainant is a member of the Dabarre sub-clan of the Rahanwein clan. His uncle was a Minister for Higher Education of the former Said Barre regime. Upon the outbreak of clan violence in 1991, the complainant and his family resided in Baidoa, largely populated by Rahanwein, but controlled by Said Barre's brother-in-law, a member of the Marehan sub-clan of the Darod clan. According to the complainant, a competing sub-clan destroyed the city, killing many, only for Rahanwein forces to return, followed by pillaging Marehan forces.

2.2 Following the destruction of the complainant's house, Marehan forces detained the complainant and his wife. Upon learning they were Rahanwein, they were taken prisoner and forced to work on local farms. The complainant alleges that his wife was raped, but they escaped in April 1992. After the death of his brother at the hands of the forces of a militia warlord, Hussain Aideed, of the Hawiye clan, the complainant and his wife reached an area where some of his Dabarre sub-clan lived and where he left his family. He departed the area as Aideed forces had killed many of his relatives. In November 1992, close to the national border, the complainant heard that his Dabarre sub-clan had been attacked by another sub-clan of the Rahanwein. In December 1994, he heard that his uncle, the former Minister, had died at the hands of Aideed forces.

2.3 On 25 December 1997, the complainant reached Sydney, Australia, via Thailand, without valid documentation. From that point he has remained in immigration detention. On 2 January 1998, the complainant applied for a "protection visa" (refugee status) and was granted legal representation. He claimed to fear treatment amounting to persecution in Somalia (torture or execution) on the basis of either his race or, alternatively, on the basis of his nationality, political opinion or membership of a particular social group due to his clan membership and familial ties to a political figure of the former Barre Government. On 15 January 1998, the complainant's application was refused.

2.4 On 8 July 1998, following a hearing with the complainant on 9 April 1998, the Refugee Review Tribunal (RRT) refused his application for review of the first instance decision. The RRT found the complainant to be credible and accepted his account of his clan's and sub-clan's experiences. However, it found that the human rights violations he feared were not "persecution" within the meaning of the 1951 Convention relating to the Status of Refugees since he was, instead, a victim of civil war.

2.5 On 15 October 1998, the Federal Court of Australia dismissed the complainant's application for review of the RRT's decision. On 9 April 1999, the Full Federal Court upheld the complainant's appeal against the Federal Court decision. On 26 October 2000 a majority of the High Court upheld an appeal by the Minister of Immigration and Multicultural Affairs against the decision of the Full Federal Court, and affirmed the RRT's decision.

2.6 On 30 November 2000 and 2 February 2001, the Department of Immigration and Multicultural Affairs rejected applications for a discretionary ministerial waiver under the Migration Act of the RRT decision.

The complaint

3.1 The complainant contends that there are substantial grounds for believing that he will be subjected to torture if returned to Somalia, placing the State party in breach of its obligations under article 3 of the Convention. He states that there is no safe place for him in Somalia, as Mogadishu airport and Baidoa are controlled by Aideed's Hawiye clan. Other Rahanwein sub-clans are in conflict with his sub-clan. Furthermore, he claims to be personally at risk by reason of being a relative of a former Minister in Said Barre's regime. He fears that upon return to Mogadishu, the Hawiye clan would ascertain his clan membership immediately and attempt to extort money from him. He fears that they will torture him or summarily execute him if he is

unable to meet their demand for money. If he avoids detention or execution at the airport, he contends it is simply a matter of time before hostile clans would detain and torture him as he has lost all contact with relatives and friends.

3.2 As to the broader situation, the complainant cites a letter from Amnesty International (Australia) of October 1998, a UNHCR report of September 1999, a report of the Special Rapporteur of the Commission on Human Rights of January 2000, a United States Department of State report of February 2000 and a US Committee for Refugees report of August 2000 for the general proposition that persistent and current patterns of gross human rights abuses continue in many areas of the country. As to a personal risk of torture, the complainant argues that his and his family's experiences, including their forced labour, the rape of his wife and the death of his brother-in-law, are evidence that his fears are justified and that he would be tortured if returned to Somalia.

Observations of the State party

4.1 By note verbale of 20 September 2001, the State party contested both the admissibility and the merits of the communication.

4.2 As to admissibility, the State party contends that the communication is inadmissible, either as the facts of the claim fall outside the scope of the Convention ratione materiae and or the claims are insufficiently substantiated, contrary to rule 107 (b) of the Committee's rules of procedure. The State party observes that the issues raised have already been extensively examined at all judicial levels and by the Minister. It argues that the complainant's claim for international protection has been exhaustively examined, and that the complainant is attempting to utilize the Committee to review a claim for asylum.

4.3 The State party submits that the communication is inadmissible ratione materiae on the basis that the Convention is not applicable to the facts alleged in the communication in a variety of respects. Firstly, the acts the complainant alleges that he will face if he is returned to Somalia do not fall within the definition of torture set out in article 1 of the Convention, which refers to acts involving "a public official or any other person acting in an official capacity". The State party also refers to the *travaux préparatoires* of the Convention for the proposition that torture for the purposes of the Convention requires the responsibility for acts of torture attributable to the State.

4.4 The State party refers to the Committee's jurisprudence for support. In G.R.B. v. Sweden,[a] the Committee considered that acts inflicted by a non-governmental entity, without the consent or acquiescence of the State party, fell outside the scope of article 3. In Elmi v. Australia,[b] the Committee qualified this principle in the exceptional case of a State without a central Government for some time, where the international community had negotiated with warring factions and some factions operated quasi-governmental institutions, considering that acts of groups de facto exercising prerogatives of government could fall within the Convention.

4.5 The State party emphasizes that there are important factual and legal differences that distinguish the current case from the situation in Elmi. The State party notes that central Government was re-established in Somalia in August 2000 and 245 members of a Transitional National Assembly (TNA) were elected along strict clan lines with minority as well as dominant clans represented. In October 2000, the new Prime Minister appointed a Cabinet of 22 ministers from all major clans. Rahanwein clan members hold several important positions, and a Dabarre sub-clan member is also a minister. Moreover, the current President and Prime Minister were former ministers in the Barre regime. The Transitional National Government (TNG) is recognized by the international community as the effective Government of Somalia and, therefore, as a matter of international law, the TNG is the relevant State authority for the purposes of the Convention. Accordingly, groups acting outside the TNG, which was established in Mogadishu and is seeking to establish effective control over the whole of Somalia and restore complete stability, law and order, cannot be regarded as "public officials or other persons acting in an official capacity" for the purposes of article 1. Nor is there any suggestion that the TNG consents or acquiesces to the acts of these groups.

4.6 The State party emphasizes the distinction between private and public acts under international law, and the circumstances under which private acts may be imputed to the State. Citing learned commentary[c] and decisions of the International Court of Justice[d] and the Iran-United States Claims Tribunal,[e] as well as decisions of high national courts,[f] the State party points to the close degree of connection with a State, including the knowledge and acquiescence of the State or pursuit of State policy, before the acts of private groups may be attributed to the State.

4.7 Turning to the facts of the case, the State party refers to a variety of documentary evidence[g] that the incidents alleged by the complainant were the result of factional fighting and civil unrest, rather than on account of his family membership or on the basis of an individual profile. In particular, there is no evidence that the destruction of the complainant's house was the act of persons carrying out Marehan leaders' orders to harm former members of the Barre regime, especially since Barre's brother-in-law controlled this sub-clan. Similarly, regarding the complainant's capture by Marehan and forced labour, the evidence is that the circumstances of capture would have been the same even if he had had another tribal affiliation, depending on the circumstances at the time. As to the death of the complainant's brother, and later his brother-in-law, at the hands of Aideed forces, there is no evidence that the complainant was pursued by anyone on account of his family link to the former Barre regime. In any event, such retributions have diminished and are economically rather than politically motivated. Accordingly, the State party submits that something further is required to engage article 3 and the allegation of torture as a consequence of return.

4.8 Secondly, the communication should be deemed inadmissible ratione materiae as the complainant has failed to substantiate that there are substantial grounds for fearing torture in the case of his return. The allegations are, in any event, of extortion not of torture. Moreover, the complainant's fears are concentrated on a small section of Mogadishu and not all of Somalia, and, in accordance with standard removal practice, the complainant has the option of choosing his destination in Somalia when returned. It is not the State party's intention to return the complainant to Mogadishu.

4.9 As to the merits, the State party submits that there are no substantial grounds for believing that the complainant would face a real, foreseeable and personal risk of torture by the new Government of Somalia on the basis of his family membership. The State party notes that the general situation is improving and that the assessment of the complainant's claims must be made in the light of current conditions. The State party points again to the new governmental arrangements in Somalia and the connections with the Barre regime of many members of the Government. In the light of the newly established Government and the relative stability now emerging in the country, there is no reason to believe that the complainant would face a risk of torture from the Government if returned, either on the basis of his family link to Barre or his clan membership, or any other reason.

4.10 Nor is there a real, foreseeable and personal risk of torture by Aideed forces or other sub-clans. The State party notes that since the establishment of the new Government, prolonged fighting in the capital appears over and it would dispute any claim that current armed factions there exercise any quasi-governmental authority. Since 1999, the Bay area has experienced relative peace and, according to the independent expert of the Commission on Human Rights on the situation of human rights in Somalia,[h] life in Baidoa was resuming normality. There is no evidence, whatever the past situation, of current threats from the Marehan clan or Aideed's forces. Indeed, Aideed is the Chairperson of the Somali Reconciliation and Restoration Council, established in March 2001, of which Rahanwein and other clans are part. Clan strengths and loyalties are much changed from the situation existing at the time of the complainant's flight. The State party argues that, while there remain dangers in Mogadishu and southern Somalia of falling victim to factional violence, with the establishment of central Government these risks are faced by the population at large and do not support any allegation of a personal risk of torture.

4.11 Even if the complainant were returned to Mogadishu, which the State party does not propose, the complainant could relocate internally to the relatively stable north-west or north-east of the city. The State party proposes rather that the complainant be returned to Kenya and then, taking advantage of the UNHCR voluntary repatriation programme, the return to a stable area of the complainant's choice.

Comments by the complainant

5. By submission of 27 March 2002, the complainant commented on the State party's submissions. As to the admissibility of the case, the complainant concedes that his claims have been examined in Australia prior to the lodging of the communication, but with the exhaustion of those remedies the Committee should examine the claims. The complainant claims that his case falls within the principle adopted in Elmi, contending that the State party's assessment of the Somali political environment flies in the face of generally known facts. He claims there is no central Government, and that militia groups are acting in an organized capacity to suppress other clans.

5.2 As to the merits, the complainant rejects the State party's submissions, contending instead that the political and military environment remains unstable and that he risks torture. The complainant disagrees that the situation is sufficiently altered to allay his fears and that most violence now occurring is privately motivated. The complainant refers to a variety of reports for the proposition that there is a picture of continuing instability and an environment of risk of

human rights abuses. The complainant contends that the TNG has limited authority in the country, being rather confined to Mogadishu. The complainant goes on to argue that the State party's statements that there exists a central Government are contradicted by recent travel advisories issued by the State party which warn against travel to Somalia.

5.3 The complainant also disagrees that he should show direct evidence that he would be subjected to torture in Somalia, contending instead that it is rare that corroboration of specific threats can be provided. The complainant disagrees that he could be relocated to a part of Somalia other than the Bay region where he originates, noting simply that UNHCR does not currently repatriate persons in the complainant's position to either the Puntland or Somaliland regions.

Issues and proceedings before the Committee

6.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

6.2 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee has also ascertained, as it is required to do under article 22, paragraph 5 (b), of the Convention, that available domestic remedies have been exhausted.

6.3 The Committee considers that the communication has been substantiated for purposes of admissibility, sufficiently elaborating the facts and the basis of the claim for a decision by the Committee. As to the State party's arguments as to inadmissibility ratione materiae of the communication, the Committee considers it preferable to examine issues of the scope of articles 1 and 3, and the application thereof to the instant facts, at the merits stage of the communication. Accordingly, the Committee finds that no obstacles to the admissibility of the communication exist. Since both the State party and the complainant have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of the merits.

6.4 The Committee recalls its jurisprudence that the State party's obligation under article 3 to refrain from forcibly returning a person to another State where there are substantial grounds of a risk of torture, as defined in article 1 of the Convention, which requires actions by "a public official or other person acting in an official capacity". Accordingly, in G.R.B. v. Sweden[i] the Committee considered that allegations of a risk of torture at the hands of Sendeero Luminoso, a non-State entity controlling significant portions of Peru, fell outside the scope of article 3 of the Convention. In Elmi v. Australia,[j] the Committee considered that, in the exceptional circumstance of State authority that was wholly lacking, acts by groups exercising quasi-governmental authority could fall within the definition of article 1, and thus call for the application of article 3. The Committee considers that, with three years having elapsed since the

Elmi decision, Somalia currently possesses a State authority in the form of the Transitional National Government, which has relations with the international community in its capacity as central Government, though some doubts may exist as to the reach of its territorial authority and its permanence. Accordingly, the Committee does not consider this case to fall within the exceptional situation in Elmi, and takes the view that acts of such entities as are now in Somalia commonly fall outside the scope of article 3 of the Convention.

6.5 Moreover, the Committee has taken into account all relevant considerations, including the existence in the State party of a consistent pattern of gross, flagrant or mass violations of human rights, although the existence of such a pattern does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. In this case, the Committee considers that the complainant has failed to show that there are substantial grounds for believing that he is personally at a risk of being subjected to torture in the event of return to Somalia.

6.6 The Committee also takes note that the State party does not intend to return the complainant to Mogadishu, and that the complainant will be at liberty to avail himself of the UNHCR voluntary repatriation programme and choose the area of Somalia to which he wishes to return.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the removal of the complainant from Australia would not entail a breach of article 3 of the Convention.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

[a] Communication No. 83/1997.

[b] Communication No. 120/1998.

[c] Jennings, R.; Watts, A. (eds.): *Oppenheim's International Law (9th edition)*, 1992, at 550.

[d] Case Concerning United States Diplomatic and Consular Staff in Tehran, ICJ Rep. (1980), at 3 ("Tehran Hostages").

[e] Short v. Islamic Republic of Iran 82 (1988) AJIL 140 and Yeager v. Islamic Republic of Iran 82 (1988) AJIL 353.

[f] R. v. Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet [2001] 1 AC 61 (United Kingdom) ; *Marcos I* 806 F.2d 358, Alfred Dunhill of London Inc. v. Republic of Cuba 425 US 682, Sharon v. Time Inc. 599 F.Supp. 538, and Jimenez v. Aristeguista 311 F.2d 547, United States v. Noriega 746 F.Supp 1506 (United States of America).

[g] United States Department of State Country Report on Human Rights Practices 1992; Refugee Survey Quarterly, vol. 15, No. 1, p. 48-4; Victims and Vulnerable Groups in Somalia, Research Directorate Documentation, Information and Research Branch, Immigration and Refugee Board, Ottawa; report of the Special Rapporteur on the situation of human rights in Somalia (E/CN.4/2000/110 and Corr.1).

[h] Ibid.

[i] Op. cit.

[j] Op. cit.

Communication No. 178/2001

Submitted by:	H.O. (name withheld) [represented by counsel]
Alleged victim:	The author
State party:	Sweden
Date of communication:	11 January 2001

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 13 November 2001,

Having concluded its consideration of communication No. 178/2001, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1.1 The author of the communication is H.O., an Iranian citizen, born on 18 March 1973, currently residing in Sweden where he seeks asylum. He claims that his return to the Islamic Republic of Iran after dismissal of his refugee claim would constitute a violation of article 3 of the Convention by Sweden. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted communication No. 178/2001 to the State party on 23 January 2001. Pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to expel the petitioner to Iran pending the consideration of his case by the Committee. In a submission dated 20 March 2001, the State party informed the Committee that the Swedish Migration Board decided, on 24 January 2001, to stay the enforcement of the expulsion order.

The facts as submitted

2.1 Counsel submits that the petitioner, who is Kurdish by descent and comes from the city of Sanandaj, started in 1990 to take part in political activities on behalf of the interests of the Kurdish people directed against the Iranian authorities. These activities included turning the photos of the Ayatollah the wrong side around and encouraging students at his school to take part in demonstrations. In February 1994 the petitioner allegedly was arrested and accused of distributing leaflets at his school and writing slogans against the regime. He states that he was interrogated for two days, and then tortured by methods such as beating on the bottom of the

feet. After two months' detention, the petitioner was released. He then discovered that he had been expelled from his school. He has lately been working as a taxi driver. After his release, the petitioner stopped his political activities for fear of persecution.

2.2 On 22 February 1999, demonstrations officially sanctioned by the Government were held in Sanandaj to protest against the arrest by the Government of Turkey of Kurdish Workers Party leader Abdullah Öcalan in Nairobi. The petitioner states that the Government's intention was to turn the Kurdish people against the Governments of the United States of America and Israel.

2.3 The petitioner and about 15 of his friends planned to use the demonstrations to express their opinions on the injustices suffered by the Kurdish people in Iran. They prepared posters and leaflets with anti-Iranian and pro-Kurdistan slogans. After they started the demonstrations, thousands of people joined in and began to shout anti-Government slogans, while the petitioner and his friends handed out posters and leaflets. The military and Revolutionary Guards opened fire at the demonstrators, and many were arrested. The petitioner's friend, Jamil, was shot and the petitioner ran away. He considered it too risky to return to his family, so he hid in a friend's house for 13 days. While hidden, the petitioner was informed that Revolutionary Guards had arrested his father and brother. The petitioner left to stay with a relative in Ourmiyeh, where he stayed for 24 days. Another relative provided him with a passport under a false name, and an exit visa. The petitioner travelled to Van and Istanbul in Turkey, and after 20 days took a plane to Sweden.

2.4 The petitioner entered Sweden on 21 April 1999 and applied for asylum the following day. Upon arrival, the petitioner carried neither passport nor identification document. The Swedish Migration Board held an initial interview with the petitioner on 22 April 1999, lasting about one hour. A fuller interview took place on 20 May, lasting for about four hours. On 8 September 1999, the Swedish Migration Board rejected the petitioner's application for asylum. The Board found that the petitioner's statements were not credible and that the petitioner had not proved that he risked persecution if he returned to Iran.

2.5 The petitioner appealed to the Aliens Appeals Board, explaining that he carried no identification documents when arriving in Sweden because he had been forced to give the documents to the smuggler that brought him there, and that Iranian authorities twice had made inquiries about him at his family's house. On 11 August 2000, the Aliens Appeals Board rejected his application for asylum.

2.6 On 1 September 2000, the petitioner lodged a new application for asylum and a residence permit with the Aliens Appeals Board. The petitioner submitted further information, stating that his father and brother had been released from detention and that the Iranian authorities had made further inquiries about his whereabouts. He referred to an appeal from the Iranian Refugee Council of Stockholm that expressed concerns about his security should he be deported to Iran. Finally, he invoked humanitarian reasons for a residence permit based upon a statement from a psychiatrist affirming that he suffered from post-traumatic stress disorder, acute depression, strong memories of previous torture and was suicidal. Again, on 5 October 2000, the Aliens Appeals Board rejected his application.

2.7 On 7 November 2000, the petitioner lodged a new application with the Aliens Appeals Board, and submitted information that was intended to clarify the information he had provided at the earlier stages of his case, together with a new statement from a psychiatrist about his post-traumatic stress disorder and the serious risk of suicide. The Aliens Appeals Board rejected the application on 12 December 2000.

The complaint

3. Counsel claims that the petitioner fears that if returned to Iran, he will be arrested for his participation in the anti-Government demonstrations in Sanandaj in February 1999. He also considers it plausible that the Iranian authorities will consider his case in the context of his previous activities in the early 1990s, and conclude that he is working for Kurdish independence and against the Iranian authorities which, from the regime's point of view, is a serious political crime and treated accordingly. Counsel adds that there exists a consistent pattern of human rights violations by Iranian authorities, in particular against political and religious opponents, and there is overwhelming reason to believe that the petitioner will be subjected to torture or other inhuman treatments if returned to Iran.

State party observations on admissibility

4. In its observations of 29 March 2001, the State party does not contest the admissibility of the communication, as domestic remedies were exhausted with the Aliens Appeals Board's decision of 5 October 2000. However, the State party points out that the petitioner, under chapter 2, section 5b, of the Aliens Act, may lodge a new request for a resident permit with the Aliens Appeals Board at any time, provided that new circumstances are adduced that could call for a different decision.

The petitioner's comments on the State party's observations

5. In a letter of 24 April 2001, counsel reiterates the points made in his initial communication. He further notes that his main objection to the migration authorities' action in the case is their incorrect application of chapter 8, sections 1 and 2, of the Aliens Act.

State party's observations on the merits

6.1 In its observations of 21 June 2001, the State party submits information on the merits of the case.

6.2 The State party refers to the criteria established by article 3 of the Convention and by the Committee: first, that the general situation of human rights in a country must be taken into account; and second, that the individual concerned must personally be at risk of being subjected to torture, including that such torture must be a necessary and foreseeable consequence of the return of the person to his or her country.

6.3 With regard to the first criterion, the State party notes that although there are indications that Iranian society is undergoing changes that may bring about improvements in the human rights field, the Government of the Islamic Republic is still reported to be a major abuser of human rights.

6.4 In respect of the second criterion, the State party contests that there is a foreseeable, real and personal risk that the petitioner will be subjected to torture if returned to Iran. It points out that the alleged factual inconsistencies and shortcomings in the petitioner's account raise serious doubts as to his credibility and the accuracy of the events he has recounted. The State party refers to the requirements contained in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (Geneva, 1992), paragraph 205 of which states that the applicant should:

> "(i) Tell the truth and assist the examiner to the full in establishing the facts of his case;
>
> (ii) Make an effort to support his statements by any available evidence and give a satisfactory explanation for any lack of evidence. If necessary he must make an effort to procure additional evidence."

6.5 In this regard, the State party states that the petitioner has provided no evidence whatsoever in support of his claim that he, his father and brother have been arrested, nor has he provided a certificate or the like concerning his discontinued schooling, or precise information regarding where he was being detained or the detention and release of his brother and father.

6.6 Furthermore, the State party notes that the petitioner stated before the Swedish Migration Board that if he were returned he would be held responsible for arranging the demonstration in Sanandaj. However, upon learning that the Swedish authorities considered this proposition improbable, he stated that he participated, but did not arrange, the demonstration. The State party in this context also refers to the petitioner's statement that 20 people were killed during the Sanandaj demonstration, whereas reports stated that approximately 20 people were killed in demonstrations at that time over the whole country.

6.7 Regarding the question of how the petitioner thought the Iranian authorities knew about his participation in the demonstration, he replied before the Swedish Migration Board that he thought he had been filmed from a helicopter. The State submits that it is unlikely that a person in a moving crowd of thousands of people can be identified in this way. When presented with this statement, the petitioner added other ways in which he might have been identified.

6.8 The State party states that the petitioner gave contradictory information about where his father and brother were detained, saying at first that they were detained in Ourmia, and then in Sanandaj. He also changed his account in regard to the name of the friend that was shot during the demonstrations in 1999. According to the State party, the author has also been inconsistent about whether his family was politically active. Before the Swedish Migration Board, the petitioner stated that apart from his dead brother, the family had not been politically active, whereas in his communication to the Committee he stated that the family had been politically

active for years. Furthermore, the State party refers to the petitioner's statements before the Swedish Migration Board that at first his passport was destroyed in Turkey, and later that he returned his false passport to the smuggler who assisted him in travelling to Sweden.

6.9 With regard to the diagnosis of post-traumatic stress disorder, the State party finds that it is of importance to the overall assessment of the petitioner's credibility. It notes that the underlying medical documentation seems to be based solely on statements given by the petitioner. The petitioner allegedly carries no physical evidence of the alleged torture and, according to himself, there were no visible injuries or need for medical attention at the time of the alleged beating. In addition, the petitioner's mental problems were mentioned either at the previous hearings, or in the application to the Swedish Migration Board, or in the first appeal to the Appeals Board.

6.10 On the basis of the above, the State party doubts the petitioner's account on several points, and therefore his general credibility. With reference to communication No. 149/1999, A.S. v. Sweden, the State party considers that the petitioner has not provided sufficient information for the burden of proof to shift.

6.11 Thus, the State party does not subscribe to the petitioner's presentation of the facts. Even if deemed credible, the State party considers that the petitioner has still not made sufficiently clear that he runs the risk of being arrested or tortured if returned to Iran. It states that it is obvious that the petitioner was never in any leading position in the opposition against the regime and not even a member of Komala, and he has not claimed to have been registered by the authorities on account of his political sympathies, but rather stated that he was not an object of interest to the authorities until the demonstrations in February 1999.

6.12 The State party concludes that the petitioner has failed to substantiate his claim that he would run a personal, real and foreseeable risk of being tortured if returned to Iran, and that an expulsion order therefore would not violate article 3 of the Convention.

The petitioner's comments to the State party's observations

7.1 With regard to the State party's observation that the petitioner said he was identified in the demonstration by a helicopter, counsel points out that the petitioner meant to say that he could have been identified by helicopter or in another way.

7.2 Furthermore, counsel claims that the petitioner stated that only his brother was active in the Kurdish political organization. When the petitioner in his submission to the Committee stated that his family had been politically active for many years, he meant that his family had been attributed a political role because of his and his brother's political activities. He also points out that the information received about his father's and brother's detention came from his mother, through a friend, since the petitioner has not been able to be in direct contact with his family.

7.3 Counsel claims that the State party does not apply the same criteria when considering an application for asylum as the Committee. He contends that the State party often disregards documents provided by the complainant, such as medical reports. With regard to the State party's allegation that the petitioner has not fulfilled his obligation to provide documented information, counsel states that the State party rarely give value to such evidence, and he finds it awkward that the State party in this particular case bases its rejection upon the lack of such evidence. Furthermore, it has been impossible to trace documentation concerning the petitioner's imprisonment in 1994 or that of his brother and father in February 1999. Counsel points out that the petitioner left Iran in a hurry and was therefore unable to collect any documents.

7.4 Counsel explains that the failure to mention the petitioner's mental health problems at an earlier stage is explainable by the fact that the petitioner did not know what information to provide. It is pointed out that the petitioner has only a basic education.

7.5 Regarding the State party's allegation that the petitioner stated that he was one of the organizers of the demonstrations in Sanandaj, counsel points out that once the petitioner realized that the State party had misunderstood the level of his participation at the demonstrations, he provided clarifications.

7.6 In general, counsel points out that misunderstandings often occur during interviews with asylum applicants, due to the fact that the applicants are exhausted from long journeys and traumatic experiences and are terrified by authorities.

Further observations by the State party

8.1 The State party submitted further observations regarding the merits of the case on 2 October 2001. The State party objects to counsel's statement that it would be futile to submit documents to the Swedish authorities. It stresses that the Swedish migration authorities examine as thoroughly as possible every case put before them, including any piece of evidence submitted.

8.2 The State party notes that the petitioner has based his application on the alleged arrest of his father and brother, although he has not been able to contact either of them, nor procure documents with regard to them. The State party considers that the petitioner should at least be able to explain when he last heard from his family, what efforts he has made to contact them and why he has not succeeded. Furthermore, the State party refers to K.M. v. Switzerland, communication No. 109/1998, and contends that there is nothing to suggest that members of the petitioner's family have been intimidated since his brother and father were released in mid-1999.

8.3 With regard to the petitioner's credibility, the State party explains that at both hearings with the Swedish Immigration Board, the petitioner stated that he understood the interpreter. At the second hearing, which took place a month after the petitioner arrived in Sweden, the notes from the hearing were read out and translated for the petitioner who did not object to the content. When asked about his health condition, the petitioner answered that he was well. The State party stresses that the petitioner at neither of the two meetings with the Swedish Immigration Board mentioned the after-effects of the torture he allegedly was subject to in 1994.

Further comments by the petitioner

9.1 On 25 October 2001, counsel submitted further comments to the State party's observations of 2 October 2001. In relation to the State party's argument that the author should have provided documentation for his claim, counsel submits that it is risky and therefore difficult to have documents sent from Iran.

9.2 With regard to the State party's argument that nothing in the case suggests that the petitioner's family has been intimidated after mid-1999, counsel contends that Iranian authorities searched for the petitioner after his participation in the demonstrations in 1999, but that they probably stopped searching because they realized that the petitioner had left Iran. However, the fact that the petitioner has not received information about harassment of his family after 1999 does not imply that the authorities are not still interested in him.

9.3 Counsel also refers to a 2000 report by Ms. Gitte Stedt at the Psychological Department of the University of Stockholm which criticizes the asylum interview procedure followed by the Swedish Migration Board. In particular, the report alleges that the Board officials fail to establish relations of trust with the applicants and, since questions are complex, misunderstandings ensue.

Decision concerning admissibility and examination of the merits

10. Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being examined under another international investigation or settlement procedure. The Committee notes that the State party has not raised any objection to the admissibility of the communication (cf. State party's observations dated 20 March 2001). The Committee therefore finds that no obstacle to the admissibility of the communication exists and proceeds with the examination of the merits of the communication.

11. In accordance with article 3, paragraph 1, of the Convention, the Committee has to determine whether there are substantial grounds for believing that the petitioner would be in danger of being subjected to torture if he returned to Iran. In order to do this, the Committee must, in accordance with article 3, paragraph 2, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. In other words, the existence of a consistent pattern of violations of human rights within the meaning of article 3, paragraph 2, lends force to the Committee's belief that substantial grounds exist within the meaning of the paragraph.

12. However, the Committee has to determine whether the person concerned would be personally at risk of being subjected to torture in the country to which he would be expelled. Consequently, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a particular country does not in itself constitute a sufficient ground for concluding that a particular person would be in danger of being subjected to torture after returning to his country;

additional grounds must exist in order to conclude that the person concerned is personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person cannot be considered to be at risk of being subjected to torture in his specific circumstances.

13. In the present case, therefore, the Committee has to determine whether the expulsion of the petitioner to Iran would have the foreseeable consequence of exposing him to a real and personal risk of being arrested and tortured.

14. The State party has pointed to inconsistencies and contradictions in the petitioner's statements which in its opinion cast doubt on the veracity of his allegations. Even assuming, however, the truth of the petitioner's statements regarding his past experience of detention in Iran, the Committee considers, on the basis of the information provided, that the political activities that the petitioner claims to have carried out prior to and during the demonstrations in February 1999 are not of such a nature as to lead to the conclusion that he risks being tortured upon his return. This view is further supported by the fact that the petitioner was not the object of interest by Iranian authorities after he was released from detention in 1994, assuming that this occurred, and until the demonstrations in February 1999.

15. On the basis of the above considerations, the Committee considers that the petitioner of the communication has not substantiated his claim that he would be subjected to torture upon return to the Islamic Republic of Iran.

16. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the petitioner to Iran would not constitute a breach of article 3 of the Convention.

Complaint No. 179/2001

Complainant:	B.M. (name withheld)
Represented by:	Counsel, Juristfirma Madelaine Seidlitz, Stockholm
State party:	Sweden
Date of Complaint:	23 March 2001

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 April 2002,

Having concluded its consideration of complaint No. 179/2001, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1.1 The complainant is B.M., a citizen of Tunisia, currently awaiting deportation in Sweden. He claims that his removal to Tunisia would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 11 April 2001, the Committee forwarded the complaint to the State party for comments and requested, under rule 108 of the Committee's rules of procedure, not to return the complainant to Tunisia while his complaint was under consideration by the Committee. The State party acceded to this request.

Facts as presented by the complainant

2.1 The complainant lived and worked in Saudi Arabia from 1983 to 1998. During this period, he was very active in the Muslim community, holding religious discussions with other Muslims and collecting money for the poor and for the families of imprisoned members of the Al-Nadha Party in Tunisia. The complainant is not a member of that party but an active supporter. He states that all Muslim organizations in Tunisia are considered to be working politically against the Tunisian regime, including the Al-Nadha Party.

2.2 In 1989, 1990 and 1992, while the complainant was till residing in Saudi Arabia, he made several visits to Tunisia. His first visit in 1989 was to arrange his marriage contract. He was arrested at the airport, detained and interrogated in prison and then brought before the

"Al-Kassabah" court where he was forced to sign a confession stating that he adhered to Wahhabism, which is the interpretation of Islam practised in Saudi Arabia. The complainant was allegedly tortured during the interrogation.

2.3 In 1990, the complainant entered Tunisia again in order to marry. He was again arrested at the airport, interrogated, accused again of being a Wahhabi and then released. In 1992, the complainant and his wife went to Tunisia together. They were arrested at the airport and interrogated about the complainant's activities and religious ideas. He was again accused of being a Wahhabi and of collecting money for the families of men imprisoned for activities against the Tunisian regime. After interrogation they were released, but a travel ban was issued. A few days later, uniformed and civilian police forcibly entered the house where they were staying. The police forcibly removed the veil of the complainant's wife, and beat the complainant. The couple were brought to a camp where they were interrogated separately for approximately three hours and then released after the complainant signed a confession stating that he had adopted the Wahhabi ideas and had forced his wife to wear a veil. On their release, the couple was helped by a friend of the complainant's to leave the country and return to Saudi Arabia.

2.4 On his return to Saudi Arabia in 1992, the complainant continued with his activities in the Muslim community. In July of that year, he also received a new passport at the Tunisian Embassy in Riyadh. In 1993 a "secret decree" was issued in Tunisia, which forbade Tunisian embassies from issuing or renewing passports without consulting the Tunisian Ministry of Internal Affairs. For wanted persons, the embassies could only issue a laisser-passer for a journey back to Tunisia.

2.5 In 1996, the complainant received information that he and other Tunisians were being monitored by the Tunisian Embassy. He was also told that another Tunisian who lived in Saudi Arabia and whom he used to meet for religious discussions had been arrested and imprisoned when he was visiting Tunisia on vacation.

2.6 In 1997, another Tunisian who worked on the same type of activities as the complainant was refused an extension of his passport by the Tunisian Embassy in Riyadh. He later left Saudi Arabia and went to Switzerland. On 1 August 1997, the complainant applied for asylum in Switzerland, but since he had no proof of the risk he would be facing upon return to Tunisia, and because he wished to live in Saudi Arabia, he withdrew his application and returned to Saudi Arabia.

2.7 On 27 July 1997 the complainant's passport expired. He applied for an extension at the Tunisian Embassy in Riyadh but was refused on 9 November1997 for "administrative reasons". The complainant believes that his passport was not extended because he is wanted by the Tunisian authorities. He then tried, with the help of friends, to obtain a Saudi Arabian passport but failed. The complainant knew that if he stayed in Saudi Arabia without a valid passport he would be forcibly returned to Tunisia where he would be arrested, imprisoned, and most probably subjected to torture. He persuaded a contact in Saudi Arabia to make false stamps to extend his passport. With the help of friends he obtained a business visa with which he entered Sweden on 26 March 1998.

2.8 Since his arrival in Sweden the complainant has been involved in activities in the mosque and gives lectures on Islam. He is convinced that the Tunisian authorities are aware of these activities. His wife returned to Tunisia from Saudi Arabia. She was subjected to different kinds of harassment and was finally "forced" to divorce the complainant. On 14 May 1999, the complainant married a Swedish citizen of Tunisian origin. The couple have since divorced but have a daughter together.

2.9 On 1 March 1999, the complainant's application for asylum and a residence permit was turned down by the Swedish Immigration Board. He appealed the decision to the Aliens Appeals Board. On 28 September 2000, his appeal was refused.

2.10 In February 2001, the complainant then made a second application for asylum and a residence permit to the Aliens Appeals Board. His second application was also refused although he submitted the false stamps he had bought in Saudi Arabia to extend his passport, a second letter from the Chairman of the Al-Nadha certifying his personal knowledge of the complainant and referring to the likelihood of his being subjected to torture if deported to Tunisia, and a letter from UNHCR stating the following, "UNHCR has no reasons to doubt the genuineness of the above attestation [certificate from the Chairman of Al-Nadha]. In light of this, and considering that members of the Al-Nadha Party still risk persecution in Tunisia, we would advise against the return of the applicant to Tunisia."

2.11 On 6 March, the complainant submitted a third application for consideration by the Aliens Appeals Board. The complainant included a letter from Amnesty International, Sweden and the United States Department of State country report describing the general human rights situation in Tunisia. The letter from Amnesty also states that in the opinion of the organization the complainant would be at risk of torture if retuned to Tunisia because of his involvement with Al-Nadha. On 19 March 2001, the Aliens Board rejected his application, stating that the complainant had referred to the same information as in his previous applications.

2.12 The complainant says that the general human rights situation in Tunisia is very bad. Thousands of persons are imprisoned for their religious and/or political beliefs. He refers to different reports by Amnesty International according to which there is a high risk of persecution for members and sympathizers of Al-Nadha.

The complaint

3.1 The complainant claims that due to his involvement with Al-Nadha, the fact that he was previously arrested and interrogated by the Tunisian authorities, and the existence of a consistent pattern of gross violations of human rights, there are substantial grounds for believing that he would be in danger of being subjected to torture on return to Tunisia and, therefore, Sweden would be violating article 3 of the Convention if he were returned there.

3.2 The complainant states that the Immigration Board's decision not to grant him asylum was based on an incorrect assessment of the evidence before it and that very important information provided by the complainant, including the letters from the Chairman of Al-Nadha,

the letter from UNHCR and information from Amnesty International, all of which specifically referred to the risk that the complainant would be subjected to torture, were not taken into account in forming its decision.

The State party's observations on admissibility and merits and the complainant's comments thereon

4.1 The State party raises no objection to the admissibility of the petition.
On 8 October 2001, the State party submitted its comments on the merits of the petition. The State party explains that when the Immigration Board rejected the complainant's application for asylum and a residence permit, it also ordered his expulsion either to Tunisia or to Saudi Arabia.

4.2 The State party submits that it is primarily upon the complainant to collect and present evidence in support of his claim.[a] Furthermore, it is of the view that the competent national authority conducting the asylum hearing is in the best position to judge the general veracity of the complainant's case and consequently great importance must be attached to its assessment. The State party submits that the complainant has not substantiated his claim that he would run a personal, real and foreseeable risk of being tortured if returned to Tunisia.

4.3 On the complainant's claim to have been intimated by the police on account of his political and religious beliefs in 1989, 1990 and 1992, the State party submits that neither of the incidents in 1989 or 1990 prevented his from returning to the country. Yet the incident in 1989 appears to have entailed the most serious violation of his rights. The State party highlights that in this regard the complainant has provided no details of the abuse, no information about the possible after-effects and no evidence to support his claim, and refers in this connection to the Committee's general comment on the implementation of article 3 of the Convention.[b] The State party also adds that although the complainant was already at this time accused, inter alia, of providing financial support to families of persons imprisoned for activities against the regime, he was never convicted as a result of the allegations made against him. On the contrary, and according to the complainant himself, in 1989 the court issued a certificate stating that he was not wanted by the authorities. The State party submits that with regard to the two other occasions when the complainant claims to have been interrogated, he makes no claim of being tortured, and in this regard the State party notes that a risk of detention is not sufficient to justify the protection of article 3 of the Convention, and refers to I.A.O. v. Sweden.[c]

4.4 The State party submits that the claim of having been monitored by the Tunisian authorities ever since his arrival in Saudi Arabia has not been substantiated and that there is nothing to indicate that they knew of his activities in Saudi Arabia or showed any particular interest in him at any other time between 1992 and 1997. In this context, the complainant has not claimed that other Tunisians who participated in the activities for which the authorities allegedly wanted to arrest him were tortured.[d] In addition, the State party notes that he was granted a new passport by the Tunisian Embassy in July 1992 and appears to have had contact with the Embassy without ever receiving any indications that he was wanted by the Tunisian authorities or was requested to return to Tunisia.

4.5 In the light of the above, the State party submits that the complainant's claim that in 1997 he was denied an extension of his passport on the grounds that he was wanted for arrest by Tunisian authorities appears doubtful. As for the existence of a decree in 1993 prohibiting the issuance of passports to wanted Tunisian citizens, the State party has received no information to confirm this. The State party notes that the Embassy's refusal to issue the complainant a new passport was "for administrative reasons", and he has not demonstrated that there might have been any other reasons.

4.6 The State party also refers to two claims made by the complainant during the immigration proceedings: firstly, that he had received letters from his wife in which she referred to intimidation by the police after her return to Tunisia; secondly, that he had received information that his father had been interrogated by the police about his whereabouts in 1994. On the first issue, the State party notes that the complainant has not submitted any details of the circumstances surrounding the alleged harassment, nor has he submitted the letters or given any reason for not doing so. On the second issue, the State party submits that the documents provided as evidence were examined by the Aliens Appeals Board in its first decision and for several reasons considered not to be genuine.

4.7 With respect to the second letter from the Chairman of Al-Nadha, the State party submits that "given the assessment regarding the first certificate, the reliability of the second can be put in question". The Aliens Appeals Board had decided that the first letter had been issued without the Chairman's personal knowledge of the complainant.

4.8 With respect to the letter from UNHCR, the State party submits that it appears to have been based solely on the certificate by the Chairman of Al-Nadha and, although the State party believes the certificate to be genuine, its reliability does not appear to have been assessed by UNHCR in terms of a "foreseeable, real and personal risk" test.

4.9 With respect to the letter from Amnesty International Sweden, the State party submits, firstly, that it is not possible to tell from the letter what facts the complainant submitted to that organization; thus, it cannot be ruled out that there may be significant differences in content and detail between the information available to the immigration authorities and the information available to Amnesty International. Secondly, there is nothing in the note to indicate that Amnesty International had made any assessment of the credibility of the complainant's statement of facts. Neither is there anything to suggest that the assessment was made against the criterion of "foreseeable, real and personal risk". The State party is therefore of the view that the conclusion proposed in the letter can only be of limited significance in assessing the case at hand. In addition, the State party submits that reports from, among others, Amnesty International in fact form part of the material available to the Swedish immigration authorities in their decision-making process.

4.10 On the complainant's suggestion that in addition to the Al-Nadha association he risks arrest and torture for having entered Sweden with a fraudulent Tunisian passport, the State party responds that, firstly, the Board was of the opinion that the complainant had not falsified his passport. Secondly, there is nothing to indicate that, even if the complainant were charged in

Tunisia with falsifying his passport, he would necessarily be subjected to ill-treatment or torture. Thirdly, no information has been provided to indicate that the Tunisian authorities would know if the complainant were in possession of an illegal passport.

4.11 In light of all the above arguments, the State party doubts the general veracity of the complainant's claims. In its view the complainant should not be granted the benefit of the doubt, without providing additional details and evidence.[e]

4.12 The State party does not deny that the human rights situation generally in Tunisia is "far from ideal", and makes reference to the Amnesty International report of 2001 and the United States Department of State Country Report on Human Rights Practices for 2000. It leaves it up to the Committee to decide whether this constitutes a consistent pattern of gross, flagrant and mass violations of human rights.

4.13 With respect to a possible expulsion to Saudi Arabia, the State party notes that the complainant has not claimed that he is wanted there or would be subject to arrest and torture there. However, the State party submits that the complainant must prove that there is also a foreseeable, real and personal risk that he would be returned from Saudi Arabia to Tunisia, where he claims he would be tortured. According to the State party, foreigners are allowed to reside and work in Saudi Arabia provided that they are sponsored by a citizen or a domestic business and have a valid residence permit. The complainant lived in Saudi Arabia for 15 years and therefore must have had some kind of sponsor. The State party submits that the complainant has provided no information to indicate that his Saudi residence permit would not be extended if he were returned to Saudi Arabia, nor that the Saudi authorities would hand him over to the Tunisian authorities. In fact, he was granted permission to return there within six months of his departure.

4.14 In response to the State party's submission, the complainant contests the version of the facts submitted by the State party. With respect to the State party's response to the letter from Amnesty International, the complainant refers to a further letter provided by Amnesty International, dated 23 November 2001, in which it confirms that the information it relied on in the assessment of the complainant's case was that "provided in the inquiry made by and the decisions taken by the Swedish immigration authorities". Amnesty also stated that it "has indeed made its risk-assessment against the criterion of 'foreseeable, real and personal', as the organization on numerous occasions has reported abuses against members and sympathizers of Al-Nadha, as well as against other people accused of supporting the group". Amnesty International emphasizes, with reference to the Swedish authorities' decisions, that even individuals with a weak link to Al-Nadha have been subjected to persecution in Tunisia.

4.15 With respect to the information provided by UNHCR, the complainant states that the office had provided two letters in which it states its clear position that *all* Al-Nadha members risk persecution. This statement goes even further than evaluating individual risk.

4.16 As to the letters from the Chairman of Al-Nadha, the complainant notes that the second letter makes it clear that he has personal knowledge of the complainant. Indeed, the State party itself states that it has no reason to doubt that the certificate is genuine.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that all domestic remedies have been exhausted and finds no further obstacles to the admissibility of the communication. Thus, the Committee proceeds to a consideration of the merits.

5.2 The Committee must decide whether the forced return of the complainant to Tunisia would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In order to reach its conclusion, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.

5.3 The Committee notes the complainant's argument that there is a foreseeable risk that he will be tortured if deported to Tunisia because of his involvement with Al-Nadha and the fact that he was previously interrogated and tortured by the Tunisian authorities. The Committee takes note of the information provided by Amnesty International but observes that the complainant does not contest that he was not a member of Al-Nadha nor involved in any political activity, but merely involved in work of a humanitarian nature. In addition, the Committee notes that the complainant has not provided any evidence of having been tortured by the Tunisian authorities and has not alleged any other circumstances which would appear to make him particularly vulnerable to the risk of being torture. This consideration is further supported by the fact that the author, although allegedly tortured in Tunisia in 1989, returned to Tunisia in 1990 without being subjected to torture. For the above-mentioned reasons, the Committee finds that the complainant has not provided substantial grounds for believing that he would be in danger of being tortured were he to be returned to Tunisia and that such danger is personal and present.

6. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Tunisia would not constitute a breach by the State party of article 3 of the Convention.

Notes

[a] The State party refers to S.L. v. Sweden, complaint No. 150/1999, Decision adopted on 11 May 2001.

[b] Official Records of the General Assembly, Fifty-third session, Supplement No. 44 (A/53/44), annex IX, para. 8 (c).

[c] Case No. 65/1997.

[d] The State party refers to J.U.A. v. Switzerland, case No. 100/1997, Decision adopted on 10 November 1998.

[e] The State party refers to A.S. v. Sweden, case No. 149/1999, Decision adopted on 24 November 2000.

Complaint No. 180/2001

Complainant: Mr. F.F.Z.

Submitted by: Marianne Vólund

State party: Denmark

Date of submission: 1 March 2001

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 April 2002,

Having concluded its consideration of complaint No. 180/2001, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts its Decision under article 22, paragraph 7, of the Convention.

Decision

1.1 The complainant is F.F.Z., a citizen of the Libyan Arab Jamahiriya, born on 29 September 1968, currently residing in Denmark, where he seeks asylum. He claims that his return to Libya after dismissal of his refugee claim would constitute a violation by Denmark of article 3 of the Convention. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 11 April 2001. Pursuant to rule 108 of the Committee's rules of procedure, the State party was requested not to expel the complainant to Libya pending the consideration of his case by the Committee. The State party confirmed in their submission of 12 June 2001, that the complainant will not be expelled while his complaint is pending.

The facts as submitted

2.1 The complainant lived in the city of Benghazi in Libya since he was born. He finished his degree in economics in 1992, and had his own shop from 1993 until his departure from Libya. His cousin, A.A., was a member of the Islamic movement Al-Jama'a al-Islamiya al-Libya (hereinafter Al-Jama'a). The complainant spent a lot of time with his cousin and the cousin often borrowed his car, which drew the attention of the Security Service to the complainant. The complainant also supported Al-Jama'a, and he frequently attended meetings in the mosques.

2.2 In 1989, Al-Jama'a members clashed with the authorities, whereupon the Security Service arrested all persons with connections to the Islamic movement. The complainant was arrested, blindfolded, and taken to an unknown place where he underwent interrogation during which he was subjected to violence, and forced to confess that he was involved in the Islamic movement. The interrogations lasted two hours, after which the complainant was taken to a cell. Questioning was repeated two days later. After nine days in detention, he was released after having been ordered to cut his links with the Islamic movement.

2.3 From May 1995 until May 1996, he participated in the collection of money for relatives of political prisoners, on the initiative of Al-Jama'a. Then, in July 1995, the Security Service took him from his shop to a plantation area outside Benghazi where he was interrogated for three to four hours about his movements and contacts since his arrest in 1989, and then released.

2.4 On 21 May 1996, the Security Service extrajudicially executed the complainant's cousin A.A. for his participation in Al-Jama'a. The execution of A.A. is also noted in Amnesty International's report on Libya for 1997. On the night of 22 May 1996, the complainant was dragged out of his bed and handcuffed by the Security Service. He was then brought in the boot of a car to a police station where he was confined to a cell, where he was put facing the wall, threatened and verbally abused by two persons. After he had stood upright on the same spot for several hours, the Security Service started inquiring about his contacts and their political activities. He was beaten with fists, the palm of the hand, rifle butts, and kicked, all the while continuing to be verbally harassed. After the inquiry, the complainant was brought back to his cell, where he was again placed facing the wall, blindfolded and handcuffed.

2.5 Still blindfolded, the complainant was brought in for a new interrogation, this time about his contacts with his cousin. At that time, he was not aware that his cousin had been executed. He was told that his cousin had reported to the Security Service that he was involved in the armed wing of the Islamic movement, which he denied. He was kicked and hit with a stick while the people present laughed. After this inquiry, the complainant was brought back to his cell where he was kept for eight days, blindfolded and handcuffed for two of the days. He was then brought in the boot of a car to another place, where the interrogations started all over again. During 11 hours of interrogation aimed at making the complainant admit his involvement with the Islamic movement, he was beaten and kicked, and then placed on the floor with his feet tied to an upright stick, beaten on the bottom of his feet and subjected to electric shocks. Finally, he was given a piece of paper which he was told was his "explanation"; he signed, without knowing its contents. He was then returned to his cell.

2.6 After seven or eight days of further detention, the complainant was brought to an office, where two men asked him whether he had been well treated in prison. He answered in the affirmative. He was faced with two alternatives: either to serve life imprisonment, or to spy on people who met at the mosque. In order to escape prison, the complainant agreed to spy and was released on 15 July 1996, under orders to report to the Security Service every Thursday.

2.7 The complainant appeared before the Security Service every Thursday until he left for Tripoli on 21 or 22 August 1996. During his detention, the complainant had decided to leave Libya, but also that he would wait a while before leaving so as not to risk harming his family.

However, another person from the complainant's neighbourhood participating in the same group, F.E., who had been arrested and released on the same day, was again arrested in August 1996. This event made the complainant leave immediately for Tripoli. Later on, he learned that his brother had been arrested and detained for almost a month because the complainant had left. Towards the end of 1997 or early 1998, the complainant was also informed that F.E. had died in prison.

2.8 In Tripoli, the complainant stayed with a relative while waiting for a visa for Denmark that he had applied for before his arrest, in order to visit his brother. Since the issuance of a visa took longer than expected, the complainant requested that the visa be sent to Malta. On 26 August 1996, the complainant sailed illegally to Malta, having had an acquaintance provide an exit stamp for his passport.

2.9 On 27 August, the complainant arrived in Malta, where he obtained the requested visa, and he continued to Denmark on the same day. He entered Denmark with a passport that expired on 24 February 2000 which had last been extended on 25 October 1995. It contained a visa issued by the Danish consulate in Valetta. He went first to visit his brother. After some time, he met a woman whom he married in October 1996, and on 6 January 1997, he was granted a residence permit because of his marriage. The couple separated in April 1998, moved back together in March 1999, but finally divorced in December 2000. On 24 April 1997, the complainant applied for asylum.

2.10 On 2 November 1998, the Immigration Service rejected the complainant's application for asylum. The reasons for rejection related to his explanations about the three arrests he had described. Regarding the arrest in 1989, the Immigration Service attached importance to the fact that the complainant was not a member of a political party nor had he participated in any political activities, that the Security Service had arrested everybody at the mosque, including the complainant, that the fact that he was beaten is not by itself a basis for asylum, and that the complainant was released after nine days.

2.11 With regard to the arrest in July 1995, the Immigration Service attached importance to the facts that the arrest was as a result of a riot in May involving members of Al-Jama'a and the Security Service in which the complainant was not involved, that many people were arrested and that the complainant was not the subject of individual persecution, and that he was released after only three or four hours. In relation to the arrest in May 1996, the Immigration Service attached importance to the facts that the complainant was arrested because his cousin was connected with the Islamic movement and because the Security Service unjustifiably suspected him of the same, that being subjected to heavy-handed treatment is not by itself a basis for asylum, and that the complainant was released after about three weeks. The Immigration Service did not consider a reason for asylum that the complainant was ordered to provide information about his friends and report to the Security Service every Thursday, nor that his brother was arrested after his departure, bearing in mind that he was released after one month. Nor was the fact that the complainant collected money for political prisoners considered a reason for asylum, since he did not have conflicts with the authorities because of it. The complainant had also stated that it is prohibited to stay outside Libya for more than six months. However, the Ministry of Foreign Affairs confirmed in a letter dated 30 January 1998 that Libyan citizens who return to Libya more than a year after their legal or illegal departure would be detained and questioned, and then

released after some hours. Finally, the Immigration Service attached importance to the fact that the complainant's passport carried an exit stamp dated 27 August 1996, but that he only applied for asylum on 24 April 1997.

2.12 On 13 January 1999, the complainant was examined by the Amnesty International Medical Group, Danish Section, which concluded that the symptoms identified in him are often seen in people who have been subjected to extreme strain such as acts of war, detention or torture, and that these symptoms are consistent with the consequences of torture. Furthermore, the Medical Group, while not identifying any physical symptoms of torture, considered that the complainant needed treatment because of his serious psychological symptoms. The report was sent to the Danish authorities on 4 February 1999.

2.13 The complainant appealed against the Immigration Service decision to the Refugee Board, which confirmed the decision of the Immigration Service on 2 March 1999. Referring to the letter from the Ministry of Foreign Affairs, the Refugee Board considered it unlikely that the complainant would risk persecution upon return to Libya. In addition to repeating some of the arguments put forward by the Immigration Service, the Refugee Board attached importance to the fact that the complainant left Libya legally on 26 August 1996, where his passport was stamped up on his departure, and therefore had no reason to believe that he was exposed to such persecution as envisaged by the law on asylum. Furthermore, the Refugee Board did not give importance to the Amnesty International medical report regarding the complainant, since it provided no objective indications that he had been subjected to torture. The complainant's date of deportation was set for 17 March 1999.

2.14 With regard to the Danish authorities' rejection of the complainant's application for asylum, counsel states that the medical report supports the complainant's submissions concerning torture and if any questions remained, he should have been given the benefit of the doubt. Furthermore, the complainant applied for asylum only eight months after his arrival in Denmark because, not knowing about the asylum procedure when he arrived, he met a woman and thought it better to get married. Counsel further states that the Immigration Service should have looked at the cumulative effects of the complainant's arrests instead of splitting them up. In this connection, counsel quotes a UNHCR Handbook that says, "Taking isolated incidents out of the context may be misleading. The cumulative effect of the applicant's experiences must be taken into account". Regarding the Refugee Board's consideration of the medical report, counsel stresses that the Danish authorities should have provided a medical examination of the complainant when he applied for asylum in 1997; instead, he was not examined until 1999, upon request from his lawyer.

The complaint

3. The complainant claims that there are substantial grounds to believe that he will once again be subjected to torture if returned to Libya. He further claims that there exists a consistent pattern of gross and massive violations of human rights in Libya which, according to article 3, paragraph 2, of the Convention against Torture, are circumstances which a State party should take into account when deciding on expulsion.

Observations by the State party

4.1 The State party submitted its observations to the Committee on 12 June 2001. The State party contests the admissibility of the case, and argues that the removal of the complainant to Libya would not entail any violation of article 3 of the Convention.

4.2 The State party reiterates the rationale of the decisions of the Immigration Service and the Refugee Appeals Board. It further adds to the facts in the case that on 14 November 1997, the complainant was interviewed by an official from the Danish Immigration Service concerning his application for asylum, and was assisted by an interpreter whom he stated that he understood.

4.3 Furthermore, on 22 June 1998, the Danish Immigration Service revoked the complainant's residence permit, since he had discontinued his cohabitation with his Danish spouse and the conditions for a residence permit were no longer fulfilled. The Ministry of the Interior upheld the decision on 9 November 1998.

4.4 On 16 March 1999, the Ministry of the Interior rejected the complainant's application for a residence permit on humanitarian grounds. However, on 25 March 1999, the Danish Immigration Service reissued a residence permit to the complainant upon resumption of cohabitation with his Danish spouse. On 4 April 2001, the Danish Immigration Service again refused to extend the complainant's residence permit, as he no longer cohabited with his spouse. The Ministry of the Interior fixed his departure from Denmark for 9 May 2001.

4.5 The State party submits that the Refugee Board's decision to reject the complainant's application for asylum was based on a concrete and individual assessment, and reiterates that there are no substantial grounds for believing that returning the complainant to Libya will mean that he would be in danger of being subjected to torture. In this connection, the State party refers to the decision of the Refugee Board, and emphasizes that the Ministry of Foreign Affairs has investigated the matter and reported that many Libyan nationals who had left Libya illegally had returned without major problems. Furthermore, it was stated that Libyan nationals returning to Libya after more than one year's stay abroad are detained and questioned by the authorities and then released. Moreover, it is argued that since it is practically impossible for a Libyan national to have his passport extended if he is of interest to the authorities, the issuance of a passport to the complainant indicates that he is not a priori a person at risk. In this connection, the State party points out, with reference to I.O.A. v. Sweden,[a] that a risk of being detained as such is not sufficient to bring a case within the scope of article 3 of the Convention.

4.6 Furthermore, when assessing the complainant's credibility, the State party points out that the Refugee Board was unable to find that the complainant had been subjected to the treatment alleged, since his statement was not supported by the medical report available and since no detailed psychological examination nor any diagnosis have been submitted. Even if it is assumed that the complainant had been subjected to the alleged outrages, the State party refers to the Committee's jurisprudence (A.I.N. v. Switzerland and X, Y and Z. v. Sweden[b]) that past torture is only one of the elements to be taken into account when examining a claim under article 3 of the Convention, and the object of considering the case is to decide whether, if returned to the country of origin, the complainant would risk being tortured.

4.7 The State party further submits that the events which, according to the complainant, motivated his departure from Libya date relatively far back in time, and that his family has not been sought or harassed on account of the complainant since his brother's arrest and release in 1996.

4.8 Reference is made to the case Tahir Hussain Khan v. Canada,[c] where the Committee found that the complainant, if returned to his country of origin which was not a State party to the Convention, would no longer have the possibility of applying to the Committee for protection, unlike the present case where the complainant risks being returned to a country that has acceded to the Convention.[d]

The complainant's comments to State party's observations

5.1 In a letter dated 1 August 2001, the complainant states that the State party's references to the letter from the Ministry of Foreign Affairs dated 30 January 1998 are not relevant to the case, since the letter allegedly only is about whether Libyan nationals who had left Libya illegally would have problems if they returned, and whether it is possible for a Libyan national to have his passport extended if he is of interest to the authorities. However, he concedes the statement in the letter that "it is practically impossible for a Libyan national to have his passport extended if he is an object of interest to the authorities", but stresses that this is not the complainant's situation, since he had his passport extended on 25 October 1995, before his problems with the authorities began. Since 8 March 2000, the complainant has unsuccessfully tried to have his passport extended by the Libyan Embassy in Copenhagen.

5.2 With regard to the State party's observations on the Amnesty International medical report, counsel states that it cannot in all cases be expected that physical signs of torture will remain three years after the torture took place, for instance when the victim was subjected to electric shocks, "position torture", blows or kicks to the body, and threats of continued torture and rape. Counsel also points out that there is a physical finding in the medical report regarding the complainant's swollen left foot which, according to the complainant, is due to beatings on the soles of his feet. Counsel further refers to an article in *Torture*, volume 11, which is critical of the fact that psychological symptoms do not receive the same recognition by authorities as physical symptoms.

Decision concerning admissibility and examination of the merits

6. Before considering any claim contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention that the same matter has not been, and is not being examined under another international procedure of investigation or settlement. The Committee notes that the State party has raised objections to the admissibility of the petition, and the Committee therefore has to consider the admissibility of the case.

7. In view of the State party's allegations that the complainant has failed to establish a prima facie case for the purpose of admissibility, the Committee considers that he has sufficiently substantiated for the purpose of admissibility his claim that if returned to Libya he risks being subjected to torture.

8. In accordance with article 3, paragraph 1, of the Convention, the Committee has to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if he returned to Libya. In order to do this, the Committee must, in accordance with article 3, paragraph 2, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. In other words, the existence of a consistent pattern of violations of human rights within the meaning of article 3, paragraph 2, lends force to the Committee's belief that substantial grounds exist within the meaning of the paragraph.

9. However, the Committee has to determine whether the person concerned would be personally at risk of being subjected to torture in the country to which he would be expelled. Consequently, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a particular country does not in itself constitute a sufficient ground for concluding that a given person would be in danger of being subjected to torture after returning to his country; additional grounds must exist in order to conclude that the person concerned is personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person cannot be considered to be at risk of being subjected to torture in his specific circumstances.

10. In the present case, therefore, the Committee has to determine whether the expulsion of the complainant to Libya would have the foreseeable consequence of exposing him to a real and personal risk of being arrested and tortured.

11. The State party has pointed out that none of the three arrests to which the complainant was subjected was related to his political activities. It also submits that the complainant would not have been able to have his passport stamped upon his departure from Libya if he had been exposed to persecution at that time, and that the Amnesty International medical report provides no objective indication that he was subjected to gross outrages. Furthermore, the events that motivated the author's departure date far back in time, and his family has not been sought or harassed on account of the complainant since his brother's release in 1996. The Committee considers, on the basis of the information provided, that the political activities that the complainant claims to have carried out are not of such a nature as to conclude that he runs a real risk of being tortured upon his return. Indeed, he does not seem to be particularly exposed to persecution by the Libyan authorities. The Danish Ministry of Foreign Affairs has stated that Libyan citizens who return to Libya more than a year after their legal or illegal departure are frequently detained and questioned, but then released after some hours.

12. On the basis of the above considerations, the Committee considers that the complainant has not proved his claim that there are substantial grounds to support his claim that he would risk torture if returned to Libya.

13. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to the Libyan Arab Jamahiriya would not constitute a breach of article 3 of the Convention.

Notes

[a] Case No. 65/1997.

[b] Case No. 90/1997, Decision adopted on 19 May 1998 and case No. 61/1996, Decision adopted on 6 May 1998.

[c] Case No. 15/1994, Decision adopted on 18 November 1994.

[d] The Convention against Torture entered into force for Libya on 15 June 1989, but Libya has not recognized the competence of the Committee under article 22 of the Convention.

Complaint No. 185/2001

Complainant:	Mr. Chedli Ben Ahmed Karoui
Submitted by:	Juridiska Byrä, by Ms. Christa Nyblom
State party:	Sweden
Date of submission:	25 June 2001
Date of decision:	8 May 2002

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 2002,

Having concluded its consideration of complaint No. 185/2001, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts its Decision under article 22, paragraph 7, of the Convention.

Decision

1.1 The complainant is Mr. Chedli Ben Ahmed Karoui, a Tunisian citizen, born on 10 November 1963, currently residing in Sweden, where he seeks asylum. He claims that his return to Tunisia after dismissal of his refugee claim would constitute a violation of article 3 of the Convention by Sweden. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 17 July 2001. Pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Tunisia while his communication is under consideration by the Committee. In a submission dated 12 September 2001, the State party informed the Committee that it had decided to defer the expulsion order against him and consequently to stay the expulsion order against Mr. Karoui's wife and daughter.

The facts as submitted

2.1 Mr. Karoui grew up in the town of Jendouba, north-west of the capital Tunis. He attended high school, where he became interested in philosophical and political issues, especially in the Islamic movement. He has been an active member of the Islamic Al-Nahdha Movement since 1981. Later on, he became responsible for the cultural and ideological teaching within the organization in his neighbourhood.

2.2 Because of his affiliation with Al-Nahdha, he was expelled from school in 1979. His family supported his continued studies in a private school. In 1981, he was detained for one month and 10 days, and interrogated about his political activities, and more specifically about the demonstrations he had participated in. However, still being a minor, he was released without penalty. This was the first of a total of seven arrests between 1981 and 1996.

2.3 In 1983, he was detained for one month, before being sentenced to six months in prison for participating in demonstrations against the Government. He was also expelled from school because of the allegations made against him. When released, he was unemployed and relied upon the financial support of his family. In 1984, he was arrested and sentenced to two and a half years in prison for affiliating with Al-Nahdha and participating in demonstrations. In 1986, he was again arrested and detained for six months under the accusations of having produced and distributed leaflets against the Government. As the accusations were not proved, he was released without conviction.

2.4 Mr. Karoui tried to leave for Algeria in order to continue his studies, but his passport was confiscated and he was prohibited from leaving the country as well as taking up employment in Tunisia. In spite of this prohibition, he took up casual work for short periods. In November 1987, when President Ben Ali was elected, the tensions in Tunisia eased for a while before the repression hardened again. Although wanted for his participation in demonstrations against the involvement of the United States in the Gulf war, he managed to travel illegally to Algeria at the end of 1990 in order to continue his studies. He returned to Tunisia once, in June 1991, when his father became ill, but returned to Algeria at the end of the year after obtaining a Tunisian passport. He pursued his studies until the end of 1992.

2.5 In 1992 he was expelled to Tunisia together with 11 other Tunisians affiliated with Islamic movements. In Tunisia, they were kept in pre-trial detention for two and a half months. He and three other prisoners managed to escape while awaiting trial. He fled to Algeria again, where he applied for asylum on 8 September 1992. The application was rejected in December 1992, and he was again sent to Tunisia in 1993.

2.6 Upon return to Tunisia, he was arrested and sentenced to one and half years in prison for being a member of an illegal organization and for having participated in demonstrations and agitation. According to the complainant, he was maltreated and tortured during every detention, but even more so during the last one, including being struck in the right leg with a baton, causing a fracture and permanent pain; pouring water over him while he was handcuffed; removing hair from his body; and burning his body with cigarettes.

2.7 When he married an Algerian woman in December 1994, he planned to abandon political activity. He worked for a construction company from 1 March 1996 to 30 June 1999. However, in 1996, he was again accused of anti-Government activity after refusing to participate in meetings called by the local leader of the governmental party. He was arrested and sentenced to one and half years in prison. He was released in January 1997, following demonstrations and international pressure to ease the repression. After his release, he had to report to the police every day. From 1998, the reporting frequency was changed to once a week and it was still in effect when he left Tunisia.

2.8 In the summer of 1999, he was informed that several members of Al-Nahdha whom he knew had been arrested, and he decided to leave the country. He obtained a passport through contacts and bribes, and a visa for Sweden to visit his cousin, and left for Sweden on 7 August 1999. He arrived in Sweden on the same day, and destroyed his passport immediately after arrival. Before applying for asylum on 24 August 1999, he awaited documents and proof from Tunisia. Whilst in Sweden he was summoned for trail in Tunisia for 15 September 1999, and he was sentenced to eight years in prison in absentia for agitation, disturbing the public order and collecting funds. The complainant submitted a copy of a certificate from the Jendouba court dated 18 February 2000, confirming this. The police searched his house in Tunisia several times, and once detained his wife for three days, following which she had a miscarriage. After he left for Sweden, his wife went to Algeria since she was under the constant pressure of the Tunisian authorities, and in January 2000 his wife and daughter travelled to Sweden.

2.9 On 4 January 2000, the Swedish Immigration Board rejected his application and ordered his expulsion to Tunisia. The reasons for rejection were mainly that the Board doubted his credibility, since he had destroyed his passport when arriving in Sweden and he had waited 17 days before applying for asylum. Furthermore, the Board noted that in spite of the strict controls at Tunisian airports, he was able to leave through a Tunisian airport using his own name. The board therefore considered it unlikely that he was wanted by the Tunisian authorities. The Board also noted that there were several discrepancies in the information provided by him, i.e. about the length of time he was employed, when he was first tortured, and the length of the sentence he received in 1996. It also noted that he had informed the Swedish Immigration authorities in an interview on 25 August that he had a case pending before a Tunisian court.

2.10 Counsel contests the Swedish Immigration Board's reasons for rejection. First, counsel contends that Mr. Karoui destroyed his passport to protect the person who helped him leave Tunisia, and that he waited before applying for asylum to receive further documentation. Secondly, Mr. Karoui was able to leave Tunisia on a passport in his own name because the person who helped him had arranged for the passport without registering his name. Counsel also contends that Mr. Karoui was sentenced to one and a half years in prison in 1993, but that because of a general amnesty, his sentence was reduced to one year as stated in the certificate from the Tunisian Ministry of Foreign Affairs. With regard to the Immigration authorities' doubts about the authenticity of the notice of trial, counsel states that these are pre-printed forms containing only the information relevant in each situation. This does not imply that a form lacking some information is unauthentic.

2.11 Mr. Karoui appealed the decision to the Refugee Appeals Board, which rejected his application on 28 September 2000. He attached a statement dated 18 July 2000 by Mr. Rashid Ghannouchi, Chairman of the Al-Nahdha movement and the Al-Nahdha Party of Tunisia, to his appeal. Mr. Ghannoucki stated that Mr. Karoui is an active member of the movement, that Algerian authorities deported him in 1993 to Tunisia, where he was subjected to arrest, ill-treatment and interrogation, that he has been sentenced to eight years' imprisonment in absentia after he left Tunisia for Sweden, that his parents have been subjected to numerous interrogations and harassment, that his wife has been arrested, harassed and tortured, and that his daughter suffers psychologically because of this.

2.12 The Refugee Appeals Board confirmed the reasons for rejection given by the Swedish Immigration Board, and added that the political activities performed by the complainant date far back in time, and that the political organization he supported was dissolved in 1992. The Board also noted that the complainant's political activities were of a minor character and at a low level within the organization. Furthermore, the Board disregarded the statement by Mr. Ghannouchi, since it had been informed that he had submitted similar statements in other cases where he had no knowledge of the persons he supported. It also noted that while Al-Nahdha was dissolved in 1992, the Chairman's letter was dated July 2000.

2.13 A further application for a review by the Refugee Appeal Board was rejected on 17 April 2001. Although Mr. Karoui attached several new documents to his latest application, including medico-legal reports, support letters from Amnesty International and a friend, the Refugee Board doubted his credibility, for the reasons given in its previous decision. The medico-legal report, from a specialist in forensic medicine at the Centre of Torture and Trauma Wounded, Karolinska Hospital, dated 14 February 2001, describes a scar on Mr. Karoui's finger, allegedly caused by someone burning him with a cigarette, a 1 by 1 cm pigmented area on his right shoulder, and pains when touched 5 cm below this area, allegedly caused by beatings with batons, and a painful, defectively healed fracture in his right foot, allegedly caused by beating with a baton. The medico-legal evaluation from the same specialist, dated 6 March 2001, concluded that his physical symptoms correspond to the alleged torture, and that it is probable that he was subjected to torture. He also submitted a psychiatric evaluation by a specialist in general psychiatry at the Centre dated 2 February 2001, stating that Mr. Karoui has objective symptoms of post-traumatic stress disorder, and that it is highly probable that he is telling the truth regarding allegations of torture.

2.14 The attached testimony, made before a notary in Germany by a friend who was expelled from Algeria and tortured upon arrival in Tunisia with him stated that Mr. Karoui had been subjected to torture. A letter from the Association des victimes de la torture en Tunisie supports the report of the friend. Finally, Mr. Karoui submitted a letter from Amnesty International, Swedish division, dated 30 March 2001, stating that members of Al-Nahdha are persecuted and tortured in Tunisia, even if they are only sympathizers. It refers to the case A. v. The Netherlands, where the Committee confirmed these findings. Amnesty International also confirms that it has received information about how persons have escaped from Tunisia through Tunisian airports with the help of persons present there, and that this method of escape was used in particular during the mid-1990s. They point out that Mr. Karoui's description of the expulsion from Algeria to Tunisia in 1993 corresponds with the information available from several sources about how Tunisian asylum-seekers in Algeria in 1993 were returned to Tunisia,

where they were reportedly arrested and tortured by Tunisian authorities. Through UNHCR, Amnesty International has received information that the Algerian authorities rejected Mr. Karoui's application for asylum in 1992. Their conclusion is that Mr. Karoui could risk torture upon return to Tunisia.

The complaint

3. Mr. Karoui submits that, if returned to Tunisia, he will be arrested and tortured for his participation in the former Al-Nahdha Party and, in this connection, for agitation, disturbing the public order and collection of funds. He adds that there exists a consistent pattern of human rights violations by Tunisian authorities, in particular against political opponents. Mr. Karoui's removal to Tunisia would therefore entail a high risk of being subjected to torture and thus entail a violation of article 3 of the Convention.

State party observations on admissibility

4. In its note verbale of 12 September 2001, the State party submits that it does not wish to raise objections as far as the question of admissibility is concerned.

State party observations on the merits

5.1 In its note verbale of 11 January 2002, the State party submits its observations on the merits of the case.

5.2 The State party reiterates the Committee's jurisprudence, in, for example, S.M.R. and M.M.R. v. Sweden, that there must exist additional grounds to the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country indicating that the individual concerned would be personally at risk of being subjected to torture upon return to that country.

5.3 Regarding the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country, the State party notes that although Tunisia has accepted the Committee's competence to receive and examine individual complaints under article 22 of the Convention, the Committee, in its consideration of the report submitted by Tunisia, in 1997, expressed concern over the wide gap that exists between law and practice with regard to the protection of human rights in the country, and in particular over the reported widespread practice of torture and other cruel and inhuman treatment perpetrated by police and security forces.

5.4 In respect of Mr. Karoui's allegation that he is personally at risk of being subjected to torture if returned to Tunisia, the State party draws attention to the fact that several provisions in the Aliens Act reflect the same principle as laid down in the Convention in article 3. Thus, the Swedish Immigration authorities apply the same kind of test when considering an application for asylum under the Aliens Act as the Committee applies when examining a complaint under the Convention.

5.5 The State party stresses that it is primarily up to the complainant to collect and present evidence in support of his or her account (cf. S.L. v. Sweden[a]). While reiterating the Swedish

Immigration authorities' reasoning, it is the State party's opinion that Mr. Karoui has not been able to substantiate his claim that he would be in danger of being subjected to torture if returned to Tunisia. The reasons for rejection of his application for asylum cast doubt upon his credibility, as does the fact that while having spent some time preparing for the journey to Sweden, he did not provide any explanation as to why he did not bring with him from Tunisia at least some documentation for presentation to the Swedish Immigration authorities. Furthermore, since he stated that his Tunisian passport was confiscated in 1986 but that he was able to obtain a new passport before going to Algeria in 1991, he may well have used a legal passport when travelling to Sweden. However, by destroying his passport, he has prevented the Swedish authorities from examining documentation vital to the assessment of his right to protection.

5.6 Upon entering Sweden, Mr. Karoui was carrying a visa issued by the Swedish Embassy in Tunisia which he obtained on wrongful grounds, since he stated that since 1 March 1996 he had held a permanent senior position at the construction company where he was employed, and submitted a certificate allegedly signed by his employer on 30 June 1999 stating that he was still employed with the company. This information should be compared with his information to the Immigration Board that he had not worked at all since the seven years he spent in prison, and later that he had had a job as an assistant in a private company since 1997.

5.7 The State party also notes that Mr. Karoui stated during the proceedings that he had left Tunisia because people he knew who also supported Al-Nahdha had been arrested in June/July 1999 and he feared being arrested himself. His application for a visa to Sweden was granted on 2 July 1999, yet he did not leave until 7 August 1999. No explanation has been provided for this delay, and although he was still under duty to report every week to the police, he was not arrested during this period.

5.8 With regard to the certificate of conviction in absentia of 18 February 2000, the State party notes that the sentence is considerably longer than the alleged previous sentences the complainant allegedly received, yet he does not appear to have appealed against it or provided any explanation for not doing so. It is also noted that the certificate of the conviction contains no information about the date of the alleged crimes, of the fact that Mr. Karoui was convicted in absentia, nor of the relevant provisions of applicable law, that the document has not been signed, and that it has only been submitted as a facsimile copy. These shortcomings, in the absence of a convincing explanation, also give reason to doubt the authenticity of this document. In this context, the State party also points out that Mr. Karoui has not furnished a copy of the judgement itself, although it was delivered more than two years ago and he should have submitted it, considering that his lawyer and brother in Tunisia have assisted him in obtaining other documentation from the Tunisian courts regarding the 1996 and the 1999 judgements.

5.9 With respect to the alleged torture, the State party recalls that Mr. Karoui only mentioned that he had been subjected to torture on other occasions than in 1993 upon a direct question from his counsel, and that the medico-legal reports only note one mark on his finger, due to a burning cigarette, although he has alleged that he was burned all over his body. The State party cites the Committee's jurisprudence: past torture is one of the elements to be taken into account when examining a claim under article 3, but that the aim of the examination is to find out whether the individual risks being subjected to torture at the time he/she would be returned to his/her home country (cf. X., Y. and Z. v. Sweden[b]).

5.10 Finally, with regard to the judgement of 15 September 1999, the State party refers again to the Committee's jurisprudence: a risk of being detained as such is not sufficient to trigger the protection of article 3 of the Convention (cf. I.A.O. v. Sweden[c]). It also refers to the case A.S. v. Sweden[d], and concludes that Mr. Karoui has failed to provide sufficient reliable information for the burden of proof to shift.

The complainant's comments on the State party's observations

6.1 In a letter of 15 March 2000, Mr. Karoui contests to the State party's contention that it is primarily incumbent upon him to collect and present evidence in support of his account. He refers to the Committee's jurisprudence in Kisoki v. Sweden[e], that complete accuracy is seldom to be expected from victims of torture.

6.2 Furthermore, in order to explain the 36-day delay before his departure for Sweden, counsel submits that Mr. Karoui needed this time to prepare his departure secretly, and that he was hiding with relatives and friends during that time.

6.3 Counsel explains his knowledge about his trial before the summons had been issued by Mr. Karoui's experience with arrest and political persecution. He assumed he would be arrested since one of the members of his workgroup within the movement had been arrested. The harsher eight-year sentence is an illustration of the intensification of the persecution of political opponents in Tunisia.

Decision concerning admissibility and examination of the merits

7. Before considering any claim contained in a communication, the Committee against torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention that the same matter has not been, and is not being examined under another procedure of international investigation or settlement. The Committee notes that the State party has not objected to the admissibility of the communication, and proceeds therefore to the examination of the merits of the case.

8. In accordance with article 3, paragraph 1, of the Convention, the Committee has to determine whether there are substantial grounds for believing that he would be in danger of being subjected to torture if returned to Tunisia. In order to do this, the Committee must, in accordance with article 3, paragraph 2, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. Furthermore, the Committee has to determine whether the expulsion of Mr. Karoui to Tunisia would have the foreseeable consequence of exposing him to a real and personal risk of being arrested and tortured, especially in view of an in absentia judgement against him.

9. The Committee refers to its concluding observations on the report submitted by Tunisia in 1997, wherein it expressed concern over the reported widespread practice of torture and other cruel and inhuman treatment perpetrated by police and security forces. Later human rights reports from reliable sources suggest that a pattern of detention, imprisonment, torture and ill-treatment of persons accused of political opposition activities, including links with the Al-Nahdha movement, still exist in Tunisia.

10. The Committee notes the State party's arguments that the inconsistencies in the information provided by the complainant during the asylum process in Sweden cast doubts on the veracity of his claim. However, the Committee attaches importance to the explanations for these inconsistencies given by the complainant, and reiterates that complete accuracy is seldom to be expected from victims of torture. The Committee finds it impossible to verify the authenticity of some of the documents provided by the complainant. However, in view of the substantive reliable documentation he has provided, including medical records, a support letter from Amnesty International, Sweden, and an attestation from the Al-Nahdha Chairman, the complainant should be given the benefit of the doubt, since he has provided sufficient reliable information for the burden of proof to shift. The Committee attaches importance to the medico-legal reports of past torture, and an assessment of the risk that the complainant may be subjected to torture if he is returned to Tunisia and detained, pursuant to the judgement of 15 September 1999, or consequent to his record of being a member of Al-Nahdha and a political opponent of the existing Government in Tunisia.

11. In the circumstances, the Committee considers that substantial grounds exist for believing that the complainant may risk being subjected to torture if returned to Tunisia.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment, concludes that the removal of Mr. Karoui to Tunisia would constitute a breach of article 3 of the Convention.

Notes

[a] Case No. 150/1999, Decision adopted on 11 May 2001, para. 6.4.

[b] Case No. 61/1996, Decision adopted on 6 May 1998, para. 11.2.

[c] Case No. 65/1997, Decision adopted on 6 May 1998, para. 14.5.

[d] Case No. 149/1999, Decision adopted on 24 November 2000, para. 8.5.

[e] Case No. 41/1996, Decision adopted on 8 May 1996, para. 9.3.

B. Decisions on inadmissibility

Communication No. 170/2000

Submitted by:	A.R. (name withheld) [represented by counsel]
Alleged victim:	The author
State party:	Sweden
Date of communication:	27 April 2000

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2001,

Adopts the following:

1.1 The author of the communication, dated 27 April 2000, is Mr. A. R., a citizen of Bangladesh, born on 6 September 1966, whose application for refugee status was rejected in Sweden on 19 March 1997. He claims that his deportation to Bangladesh would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 The State party ratified the Convention on 8 January 1986 and made the declaration under article 22 of the Convention at the same time.

1.3 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 4 October 2000. Pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to deport the petitioner to Bangladesh pending the consideration of his case by the Committee. In a submission dated 21 November 2000, the State party informed the Committee that the petitioner would not be deported to his country of origin while his communication was under consideration by the Committee.

The facts as presented by the petitioner

2.1 The petitioner states that since the beginning of the 1980s he was active in the Hindu-Buddha Christian Minority Organization and in the Bangladesh Chattra League.

2.3 During the autumn of 1992, he was attacked and abused by Muslims and detained by the police for his participation in a demonstration where he was allegedly tortured, hit on the soles of his feet and hung upside down. He was released with the help of his party and went to India for several months.

2.4 He returned later to Bangladesh and became active in the Bangladesh Sharbohara Party (BSP). Beginning 1995 he was again detained for two months by the police for his participation in a political rally. During this period, he was allegedly tortured, and he submits a medical and psychiatric report from Denmark concerning prior injuries and post-traumatic stress disorder.

2.5 After having spent another month in India, he returned to Bangladesh and became responsible for public relations and publicity for BSP.

2.6 The petitioner was then allegedly advised by other members of his party to leave Bangladesh. The party arranged and financed his flight to Sweden in October 1995.

2.7 The petitioner arrived in Sweden on 24 October 1995 and applied for refugee status. His application was rejected by the Swedish Migration Board on 13 December 1995 and, on appeal, by the Aliens Appeals Board on 19 March 1997.

2.8 Subsequently, the petitioner made three new applications before the Aliens Appeal Board under chapter 2, section 5 (b), of the Swedish Aliens Act, which allows to resubmit applications on the basis of factual circumstances that have not been earlier examined by the competent authorities. The petitioner's applications were all rejected, the latest by a decision of 9 April 1999.

The complaint

3.1 The petitioner claims that he was subjected to torture when he was detained in Bangladesh. He submits medical evidence in this regard.

3.2 The petitioner claims that if he is returned to Bangladesh, he would again be subjected to torture and that the decision forcibly to remove him to Bangladesh would therefore entail a violation of article 3 of the Convention by the State party.

State party's observations on the admissibility and merits

4.1 In a submission dated 21 November 2000, the State party made its observations on the admissibility of the case.

4.2 The State party mainly draws the attention of the Committee to the condition of the exhaustion of domestic remedies and to the fact that the decision for removal of the petitioner acquired legal force with the decision of the Aliens Appeals Board of 19 March 1997 and, according to chapter 8, section 15, of the Swedish Aliens Act, has become statute-barred after four years, on 19 March 2001. By the time the Committee would consider the present communication, the removal decision would therefore no longer be enforceable.[a]

4.3 The State party thus contends that if the petitioner would still like to obtain a residence permit in Sweden, he should make a new application to the Swedish Migration Board, which would have to take into account all circumstances invoked by the petitioner regardless of whether they have already been examined.[b] The decision would also be appealable to the Aliens Appeal Board.

4.4 The State party refers in this regard to an earlier decision taken by the Committee (J.M.U.M. v. Sweden, communication No. 58/1996) in which it decided that the communication was inadmissible for having failed to exhaust domestic remedies because the new application that had been filed after the original expulsion decision had lost legal force was still pending before the Swedish Migration Board.

4.5 The State party also considers that the communication could be declared inadmissible as being incompatible with the provisions of the Convention, in the sense of article 22, paragraph 2 because there is no longer any enforceable expulsion order.

Counsel comments

5.1 In a submission dated 28 December 2000, the petitioner transmitted his comments on the observations from the State party.

5.2 The petitioner contends that if he had made a new application for asylum, he would have been taken into custody and the Swedish Migration Board would have probably taken the decision to remove him to Bangladesh, even if such a decision had been appealed. The petitioner argues that he has indeed no chance of being granted refugee status in Sweden because the situation in Bangladesh has not changed since the decision of 19 March 1997 of the Aliens Appeal Board and the State party's immigration authorities would be in the same situation as they were originally. Neither has he any chance of obtaining a residence permit on humanitarian grounds for the same reason. Rather, he would be blamed for having hidden himself and for not having complied with the original decision of 19 March 1997.

5.3 The petitioner considers that since the State party has not granted him refugee status despite the existence of documents proving that he has been tortured in the past, the only possibility of avoiding a risk of torture in Bangladesh is a consideration of his case by the Committee.

Additional comments by State party

6.1 In a submission of 6 April 2001, the State party reiterates that since the original decision of 19 March 1997 was no longer enforceable, the petitioner could make a new application for a residence permit, which, as of the date of the submission, had not yet been done. Moreover, according to the State party's legislation, the Swedish Migration Board may also take a decision, appealable before the Aliens Appeal Board, even if the petitioner does not make such new application. Such a decision had also not been taken at the time of the submission.

6.2 The State party reiterates that the communication should be declared inadmissible for non-exhaustion of domestic remedies. In this regard, the State party considers that contrary to the petitioner's suggestion, such a new application would be effective to the extent that the Swedish Migration Board would have to take into account new circumstances as well as those presented before. The petitioner would thus legally be in the same position as when he made his original application. Among the grounds on which he could base his new application are the risks of being subjected to torture if returned to his native country, humanitarian grounds, his state of health, and the links he has established with the Swedish society. In this respect,

the State party notes that the petitioner has been in Sweden for more than five years and, according to available information, would have married a Swedish citizen in 1996.

6.3 Finally, the State party underlines that a direct enforcement of the decision of the Swedish Migration Board, without allowing reconsideration on appeal, is possible only in cases where it is obvious that there are no grounds for granting a residence permit. Moreover, if the petitioner has resided in Sweden for more than three months after his first application, such a direct enforcement, which is also appealable to the Alien Appeal Board, could only take place in the presence of exceptional grounds, such as if the petitioner had committed crimes in Sweden. The State party is therefore of the opinion that a direct enforcement is unlikely in the petitioner's case.

Issues and proceedings before the Committee

7.1 The Committee considers that, in the present case, the principle of exhaustion of internal remedies requires the petitioner to use remedies that are directly related to the risk of torture under article 3 of the Convention. The Committee is therefore of the opinion that the elements that are totally unrelated to the allegations of torture, such as his situation in Sweden and marriage to a Swedish citizen, are not within the scope of those that should be addressed in a remedy that has to be exhausted in order the meet the requirements of article 22, paragraph 5 (b) of the Convention.

7.2 Nevertheless, the Committee has been informed that the petitioner has submitted a new application for a residence permit on 6 June 2001, which may be decided, inter alia, on the grounds of a risk of torture in his country of origin. The Committee finds therefore that the author has not exhausted domestic remedies.

8. The Committee consequently decides:

(a) That the communication is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the petitioner containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the State party, the petitioner and his representative.

[Done in English, French, Russian and Spanish, the English being the original version.]

Notes

[a] The State party explains that, under Swedish law, the three new applications to the Aliens Appeal Board that were made by the author after 19 March 1997 have no incidence on the limitation period.

[b] Such an application would therefore be different in nature from the one referred to under paragraph 2.8.

Complaint No. 176/2000

Complainant: Marcos Roitman Rosenmann

Represented by: Juan A. Garcés

State party concerned: Spain

Date of complaint: 25 October 2000

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 April 2002,

Having concluded its consideration of complaint No. 178/2000, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts its Decision under article 22, paragraph 7, of the Convention.*

Decision

1. The complainant is Mr. Marcos Roitman Rosenmann, a Spanish citizen of Chilean origin and professor of sociology, at present residing in Madrid. He is represented by counsel. He alleges violations by Spain of articles 8, paragraph 4, 9, paragraphs 1 and 2, 13 and 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Spain is a party to the Convention, and made the declaration under article 22 on 21 October 1987.

The facts as submitted by the complainant

2.1 The complainant claims that he was subjected to torture in Chile following the coup d'état of September 1973. On 4 July 1996, a group of alleged torture victims filed a complaint pursuant to the applicable provisions on *actio popularis* (articles 19.1 and 20.3 of the Ley Orgánica del Poder Judicial; articles 101 and 270 of the Ley de Enjuiciamiento Criminal, *acción popular*, article 125 of the Spanish Constitution) with the Juzgado Central de Instrucción de Guardia de la Audiencia Nacional, requesting that criminal proceedings be opened against the former Chilean Chief of State, General Augusto Pinochet, for violations of human rights

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* Pursuant to rule 113 of the Committee's rules of procedure, an individual opinion signed by one Committee member is appended.

allegedly committed in Chile between September 1973 and March 1990, including violations of articles 1, 2, 4 and 16 of the Convention. On 7 May 1997 the complainant appeared before the Audiencia Nacional and gave testimony as a witness of torture in Chile.

2.2 On 16 October 1998 General Pinochet, who had travelled from Chile to the United Kingdom for medical treatment and was convalescing in London, was placed under detention by United Kingdom police authorities pursuant to a warrant issued on the basis of the criminal proceedings opened in Spain. After more than 16 months of legal, political and diplomatic actions, the United Kingdom Home Secretary allowed General Pinochet to return to Chile on 2 March 2000.

2.3 The complainant states that Spain has extraterritorial jurisdiction over crimes committed against Spanish citizens anywhere in the world, and that, accordingly, it had the right and the obligation to request the extradition of General Pinochet from the United Kingdom, in order to try him before the Spanish courts because of crimes committed against Spanish citizens in Chile.

2.4 On 8 October 1999 the Bow Street Magistrates Court in the United Kingdom decided that General Augusto Pinochet could be extradited to Spain. General Pinochet filed a writ of habeas corpus with the High Court, which was scheduled for a hearing on 20 March 2000. In the meantime, the Home Office, on its own initiative, ordered a medical examination of General Pinochet, which took place on 5 January 2000. On the basis of the results of this examination, the Home Secretary informed the parties on 11 January 2000 that he was considering the possibility of discontinuing the extradition process for medical reasons and invited comments by 18 January. The Audiencia Nacional, through the Spanish Ministry for Foreign Affairs, informed the British Home Office on 13 January that it maintained its request for extradition. However, by note verbale of 17 January 2000, the Spanish Embassy in London indicated that Spain would not appeal a decision by the Home Secretary to discontinue the extradition process.

2.5 On 19 January 2000 the Audiencia Nacional prepared a document addressed to the (British) Crown Prosecution Service, counterpart of the Spanish judicial authorities in the extradition process, to file an appeal in case of a negative decision by the Home Secretary. However, the Spanish Ministry for Foreign Affairs did not forward this document to the Crown Prosecution Service.

2.6 In a report dated 20 January 2000, the Crown Prosecution Service requested instructions in order to prepare an appeal before 23 January. The Spanish Ministry of Foreign Affairs did not forward this report to the Audiencia Nacional until 10 February 2000. Other requests of the Crown Prosecution Service of 24 and 25 January never reached the Audiencia Nacional, as a result of which the Crown Prosecution Service was unable to intervene in the judicial hearings held on 26 and 27 January in connection with a claim filed by Belgium and others against the decision of the Home Secretary to keep the medical reports secret.

2.7 On 24 January the Audiencia Nacional informed the Spanish Ministry for Foreign Affairs of its intention to appeal in case the extradition was not granted. However, it was reported that the Minister for Foreign Affairs had made public statements indicating that he would not transmit such an appeal to the British authorities.

2.8 In a decision dated 15 February 2000, the High Court accepted the claim filed by Belgium in connection with the medical reports and asked the Home Office to send a copy of them to the Audiencia Nacional in order to allow it to make a submission, if it so wished. On the same date the Home Office sent the reports to the Audiencia Nacional through the Spanish Ministry for Foreign Affairs. The Audiencia Nacional made its submission to the Home Office on 22 February 2000, including a medical report in which Spanish doctors questioned the conclusions reached by the British physicians who had examined General Pinochet on 5 January 2000.

2.9 On 1 March 2000 at 4 p.m. the Home Secretary informed the Spanish Ambassador in London through the Crown Prosecution Service, as well as the authorities of Belgium, France and Switzerland, that he would make public his decision concerning the extradition process on the following day at 8 a.m. The Spanish Ministry for Foreign Affairs, however, did not inform the Audiencia Nacional. At the same time the Home Office also sent a letter to the Crown Prosecution Service asking it to inform the Home Office in advance in case it decided to file an appeal before the courts on the following day. Copy of this letter was sent to the Audiencia Nacional by the Spanish Ministry for Foreign Affairs only on 2 March at 11.18 a.m., after the Spanish press had reported on it. Without waiting to receive the letter, the Audiencia Nacional, on 2 March, issued an order instructing the Crown Prosecution Service to file an appeal against the decision to release General Pinochet. The order was faxed at 10 a.m. to the Spanish Foreign Minister, who decided not to forward it to the Crown Prosecution Service and informed the press accordingly. In view of the fact that an appeal had not been filed, the Home Secretary, at 2 p.m., authorized the departure of General Pinochet's flight for Chile.

2.10 With respect to the exhaustion of domestic remedies in Spain, the complainant states that he filed a complaint against D. Abel Matutes Juan, the then Minister for Foreign Affairs, before the Spanish Supreme Court for refusing to cooperate with the judiciary. In a resolution dated 1 February 2000, the Spanish Supreme Court refused to examine the complaint. The complainant then filed an appeal against the resolution, which was also rejected on 22 February 2000. On 24 February 2000, the complainant filed a new complaint against the Minister for Foreign Affairs for concealing documents relevant to the extradition process. The Supreme Court refused to examine this complaint in resolutions dated 6 March and 13 April 2000. On 16 March 2000, the complainant filed a third complaint against the Minister for failing to transmit submissions of the Audiencia Nacional to the Crown Prosecution Service. This complaint was dismissed by resolutions dated 28 April and 3 May 2000.

2.11 The complainant states that the same matter has not been submitted to any other international procedure of investigation or settlement.

The complaint

3.1 The complainant argues that under Spanish law the judicial authorities are in control of the extradition process and that the executive has the obligation to comply with the judicial authorities. He claims that in the case at hand, by failing to follow the instructions of the judicial authorities and promptly forward the relevant documents to the British counterpart, the Spanish Minister for Foreign Affairs obstructed the extradition process and did not act in an impartial manner, in contravention of articles 8, 9, 13 and 14 of the Convention.

3.2 The complainant claims, inter alia, that Spain violated its obligations under the Convention by not pressing with all due diligence its extradition request. In this context the complainant invokes article 13 of the Convention, which stipulates in part that "Each State party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities." It is argued that the deliberate obstruction of the extradition process violated the complainant's rights under article 13 of the Convention to have his case examined by competent authorities and to obtain compensation under article 14 of the Convention.

3.3 The complainant also invokes article 9, paragraph 1, of the Convention, which stipulates that "States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4 ... ." It is argued that Spain's handling of the extradition process failed to meet this requirement.

Observations by the State party

4.1 By note verbale of 6 February 2001, the State party submitted its observations, challenging admissibility on several grounds.

4.2 The State party considers the communication inadmissible because the complainant lacks the quality of "victim" and explains that in the Spanish judicial proceedings that led to the request by Spain for the extradition of General Pinochet, the complainant was involved not as a victim or as a civil party to the proceedings, but rather in his capacity as a witness. In this connection the State party quotes the original complaint which stated that "the witness can be interrogated about the general practice of torture against Spanish citizens and citizens of other countries".

4.3 The State party further argues that the communication is inadmissible because of non-exhaustion of domestic remedies, since at the time of submission the complainant was in the process of appealing certain resolutions. Moreover, it is stated that the complainant failed to appeal to the Constitutional Court (Tribunal Constitucional) by way of *amparo*. It is submitted that appeals in *amparo* are effective remedies in Spain, and have been successful in many other cases of resolutions dismissing complaints.

4.4 By note verbale of 5 June 2001 the State party reiterates the arguments contained in its earlier submission and submits that the complaint should be declared inadmissible because it falls outside the scope of the Convention, bearing in mind that (a) the complainant does not claim to be a victim of torture perpetrated by the Spanish authorities; (b) the complainant did not claim to be a victim of torture in the Spanish proceedings against General Pinochet. In this sense, the State party adds that the complaint is in the nature of a test case of the scope of the Convention. The State party submits that the communication is manifestly ill-founded, as the articles of the Convention do not impose such far-reaching obligations on States parties, and certainly not on States parties in whose territory the person accused of torture is not found.

Moreover, with regard to a right to compensation under article 14 of the Convention, the State party explains that since the complainant was not one of the civil parties in the Spanish criminal proceeding against General Pinochet, he would not have had any right to compensation under the Spanish proceedings.

4.5 As to the claim that the Spanish Minister for Foreign Affairs disobeyed a judicial order (*mandato judicial*), the State party indicates that this claim was brought by the complainant before the Tribunal Supremo, which dismissed the claim on the grounds that under Spanish law, as interpreted by the Tribunal Supremo, there was no such judicial order that the Minister was bound to obey. Moreover, in the Spanish democratic order, certain domains are properly within the political discretion of the executive. The State party emphasizes that it was not the Spanish Government, but the British Government, which, in the exercise of its political discretion, decided not to extradite General Pinochet to Spain, Belgium or Switzerland, and decided instead to permit his return to Chile.

4.6 The State party further argues that the Convention against Torture does not impose upon any one State the exclusive or even preferential competence to try a person accused of torture, in the instant case, an exclusive or preferential competence of Spain to try a Chilean citizen for crimes committed in Chile. Spain acted correctly in requesting extradition from the United Kingdom, but this extradition was not granted because of the exercise of political discretion by the United Kingdom.

Further comments by the complainant

5. In submissions dated 6 March 2001 and 18 October 2001, the complainant reiterates his prior statements of fact and arguments. He refers to his appearance as a witness in the case before the Audiencia Nacional on 7 May 1997, in which he declared that in 1973, when he was 17 years old, he and other engineering students had been arrested and taken to a football stadium converted into a detention centre, where they were subjected to various kinds of physical and mental abuse. The complainant appeared as a witness, but could have joined the criminal action against General Pinochet pursuant to articles 108, 111 and 112 of the Spanish Ley de Enjuiciamiento Criminal. He further claims that the Committee should consider that domestic remedies have been exhausted, since in the circumstances of the case, an appeal on *amparo* to the Constitutional Court would not be an effective remedy, bearing in mind that the resolution of 30 May 2000 rejecting the complainant's appeal was not a summary dismissal but a reasoned judgement, and that the Constitutional Court recognizes the competence of the lower criminal courts to interpret the Spanish penal law.

Issues and proceedings before the Committee

6.1 Before examining the merits of a communication, the Committee against Torture must determine whether the communication is admissible under article 22 of the Convention.

6.2 The Committee notes the complainant's allegations that the violation of the Convention lies in the refusal of the Spanish Minister for Foreign Affairs to transmit resolutions adopted by the Audiencia Nacional to the relevant British authorities. The Committee has also noted the State party's response that the matter was raised by the complainant before the competent

Spanish courts, which determined that there was no violation of Spanish law. The Committee considers that the interpretation of national laws is within the competence of the tribunals of States parties and that, accordingly, it is not in a position to make a finding with respect to the application or interpretation of Spanish law in matters of extradition. The Committee limits itself to examining the admissibility of the communication in the light of the criteria established by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

6.3 The Committee notes that the State party's objections to the admissibility of the communication are essentially fourfold: (a) lack of standing on the part of the complainant, who does not claim to have been tortured by Spanish authorities nor became a party to the Spanish criminal proceedings against General Pinochet; (b) failure to exhaust domestic remedies, including an appeal in *amparo* to the Constitutional Court; (c) *ratione personae*, since the alleged torture was not committed by Spanish authorities, but by agents of the Chilean State, and because General Pinochet was not on Spanish soil; and (d) lack of competence ratione materiae, since no article of the Convention imposes an obligation on a State party to demand extradition of a person suspected of torture.

6.4 With respect to the State party's argument that the complainant lacks standing to bring the communication, the Committee notes that the complainant claims that he was arrested by members of the Chilean police and subjected to beatings and other ill-treatment. While those acts occurred outside of Spain, and before the entry into force of the Convention, the complainant does not claim a breach by Spain of his right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment. Rather, the complainant contends that Spain is in breach of a current obligation under the Convention to investigate fully and prosecute alleged acts of torture falling within its jurisdiction, and, in furtherance of that obligation, to pursue the extradition proceedings to the furthest extent possible. For the complainant to be a victim of the alleged violation, however, he must be personally and directly affected by the alleged breach in question. The Committee observes that in the present case, the complainant was not a civil party to the criminal proceedings in Spain against the alleged offender, General Pinochet, nor did his case form part of the Spanish extradition request. Accordingly, even if General Pinochet had been extradited to Spain, the complainant's situation would not have been materially altered (at least without further legal action on the complainant's part). The Committee considers, as a consequence, that the complainant has failed to demonstrate that, at the time of the communication, he was a victim of the alleged failure of the State party to abide by the contended obligation under the Convention to exhaust the full measure of avenues open to it in the attempt to procure the alleged offender's extradition.

6.5 Moreover, with respect to (b), the Committee notes that the complainant did not engage domestic remedies in Spain by becoming a civil party to the proceedings to obtain the extradition of General Pinochet. Further, with regard to his complaints against the Spanish Minister for Foreign Affairs, the Committee notes that the complainant did not make use of the remedy of *amparo*, which the State party contends is an available and effective remedy, citing a number of cases before the Constitutional Court in support of this proposition, whereas the complainant claims that *amparo* would not have resulted in any relief, citing relevant case law. In the

circumstances, the Committee is not in a position to decide that recourse to such remedies would have been a priori futile and thus not required for purposes of article 22, paragraph 5 (b), of the Convention.

6.6 With respect to (c), the Committee notes that the complainant's claims with regard to torture committed by Chilean authorities are *ratione personae* justiciable in Chile and in other States in whose territory General Pinochet may be found. However, to the extent that General Pinochet was not in Spain at the time of the submission of the communication, the Committee would consider that articles 13 and 14 of the Convention invoked by the complainant do not apply *ratione personae* to Spain. In particular, his "right to complain to, and to have his case promptly and impartially examined by, [the] competent authorities", and his claim to compensation would be justiciable vis-à-vis the State responsible for the acts of torture, i.e. Chile, not Spain.

6.7 With respect to (d), the Committee observes that the State party possesses extraterritorial jurisdiction over acts of torture committed against its nationals. The Committee recalls that one of the objects of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is to avoid any impunity for persons having committed such acts. The Committee observes that, based upon the State party's law, and in conformity with articles 5, paragraph 1 (c), and 8, paragraph 4, of the Convention, the State party sought the extradition of General Pinochet for trial in Spain. There is every indication that Spain would have brought General Pinochet to trial, once he were to be found on its territory, further to the indictment of 4 July 1996 of the Juez Central de la Audiencia Nacional de España. The Committee observes, however, that while the Convention imposes an obligation to bring to trial a person, alleged to have committed torture, who is found in its territory, articles 8 and 9 of the Convention do not impose any obligation to seek an extradition, or to insist on its procurement in the event of a refusal. In this connection, the Committee refers to article 5, paragraph 1 (c), of the Convention, pursuant to which a State party shall take the necessary measures to establish its jurisdiction over the offences referred to in article 4 "when the victim is a national of that State if that State considers it appropriate". The Committee considers this provision to establish a discretionary faculty rather than a mandatory obligation to make, and insist upon, an extradition request. Accordingly, the complaint falls ratione materiae outside the scope of the articles of the Convention invoked by the complainant.

7. The Committee against Torture consequently decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the State party and to the complainant.

[Done in English, French, Russian and Spanish, the English, French and Spanish texts being the original versions.]

Individual opinion of Committee member Mr. Guibril Camara, dissenting in part

I share the ultimate conclusion of the Committee that this case is inadmissible, but only on the basis of some of the reasons advanced by the majority of the Committee. I fully subscribe to the majority's reasoning as set out in paragraphs 6.4 and 6.5 to the effect that the author is neither a "victim" in the present case in the sense of article 22, in that he was not a party to the proceedings against General Pinochet in Spain, nor that it has been demonstrated that the exhaustion of domestic remedies in the form of an appeal of *amparo* to the Constitutional Court would be a priori futile. It would have been consistent with the Committee's practice, once the inadmissibility of this case became clear on either or both of these formal grounds, to conclude its consideration at that point. Instead, for reasons that are not clear from the text of the majority's decision, the majority has elected to engage in a complex discussion on the scope of the jurisdictional articles of the Convention which would have been more appropriately considered under the merits of the case had it been admissible. In procedural law, the first action of a judicial or quasi-judicial body, such as the Committee, is to satisfy itself that it is appropriately seized of a matter; this has always been the Committee's previous practice. And should it not be appropriately seized thereof, notably in the case of inadmissibility, the sole decision to be taken, after having indicated the reasons therefor, should be to conclude with declaring the case inadmissible without delving into its merits.

In my view, the majority has come to a premature interpretation of articles 5, 8, 9, 13 and 14. The majority considers that, as article 5 provides for jurisdiction to be exercised by a State party in cases where the victim is a national of that State "if that State considers it appropriate", a State possesses a discretion at all points of an investigation and prosecution as to whether it should pursue proceedings in such a case. This view neglects a variety of issues:

(a) It would appear to follow from the scheme of the Convention, including the placement of article 5 and its surrounding articles, as well as the entirety of the text of article 5, that the option in article 5, paragraph 1 (c), is to leave to States the ability to elect, when implementing the Convention into domestic law, whether or not they will confer, in principle, jurisdiction over nationals who are extraterritorial victims of torture upon their investigative and prosecutory bodies. The *travaux préparatoires* and State practice look to confirm that the option contained in article 5, paragraph 1 (c), is aimed at the adoption of generally applicable norms of criminal law by which a State party confers upon its authorities of the ability to investigate and prosecute any and all such cases. Spain, among other States, has elected to exercise that option and confer such extraterritorial jurisdiction upon its investigative and prosecutory authorities. It was pursuant to this jurisdiction, which was confirmed by proceedings in the Audiencia Nacional at an early stage, that the Spanish authorities were able to initiate their investigation of General Pinochet. It is therefore difficult to understand why the discretion in article 5, paragraph 1 (c), should, for States parties that have made the election to assume such jurisdiction, thereupon further extend to each individual case investigated and prosecuted pursuant to this jurisdiction. In this light, it seems that the majority has confused, on the one hand, the possibility to assume a (usually legislative) norm of general application concerning investigation and prosecution of acts of falling within article 5, paragraph 1 (c), with, on the other hand, the pursuit of each individual case;

(b) The majority's reasoning that the discretion contained in article 5 has further meaning beyond that outlined and that the Convention does not require an extradition request to be made is difficult to square both with the majority's own emphasis on the object of the Convention to deny impunity and to the consistent theme running through the Convention that States parties with jurisdiction over an alleged act of torture should exercise such means at their disposal to bring the alleged offender to justice. The majority's view of the "discretion" in article 5 significantly weakens the likelihood that alleged offenders in cases of torture of extraterritorial nationals will be brought to justice, certainly as compared to the cases in article 5, paragraph 1 (a) and (b), where no such discretion applies.

Even if the Committee is correct that the Convention does not operate to require a State to lodge an extradition request in a case where it has jurisdiction under its law, the Committee fails to explain why it should also be concluded that extradition proceedings should be able to be discontinued at any point. There are strong policy reasons, again derived from the scheme and object of the Convention, that an extradition request, *once made*, should be prosecuted through to its conclusion. It does not follow that to allow a discretion on whether to initiate an extradition request also requires a discretion effectively to discontinue the request at any time to be afforded.

Even if it is correct that the Convention allows a discretion to discontinue requests for extradition, the majority wholly fails to address the central point in this case as to which body should be exercising such a discretion. The Committee's consistent preference has been, in numerous contexts, for judicial resolution of allegations of torture arising within a State party. In this case, the State party's legal order confers upon its judiciary the ability to investigate cases of extraterritorial nature, to prosecute such cases, to seek extradition requests and to assess the legal implications of decisions in extradition requests and to draw the necessary conclusions. Accordingly, the State party's judiciary in this case determined that there were grounds for a legal challenge to the Home Secretary's decision to terminate the extradition proceedings. Another branch of the State party's government, having theretofore acted in an essentially administrative capacity, frustrated the judicial decision to appeal the Home Secretary's decision by failing to transmit it to the English authorities. It is more than questionable whether such an exercise of "discretion" by the executive is consistent with the principles underlying the Convention, and with the expressed will of the international community to end impunity for the authors of crimes against humanity. The majority's decision in effect deprives the author of the ability to exhaust domestic remedies in respect of the issues raised, being avenues which the State party itself recognizes have not been exhausted, and of thereafter returning before the Committee.

For these reasons, I consider the majority's view expressed in paragraphs 6.6 and 6.7 to be premature and, in any event, unnecessary to the Committee's final decision.

(*Signed*): Guibril Camara

[Done in English, French, Russian and Spanish, the English and French texts being the original versions.]

Annex VIII

Terms of reference of the Rapporteur on new complaints and interim measures

At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of rapporteur for new complaints and interim measures (rules 98 and 108).

At its 527th meeting on 16 May 2002, the Committee decided that the Rapporteur on new complaints and interim measures shall have the mandate, inter alia, to request interim measures of protection pursuant to rule 108 of the rules of procedure; to withdraw requests for interim measures in appropriate cases; to follow up on State compliance with requests for interim measures of protection; to decide on the registration of new complaints in such cases where the secretariat has sought instructions on registration; to inform the Committee at each session on action taken during the intersessional period; and to draft recommendations for the Committee's consideration of the admissibility of complaints.

Annex IX

Terms of reference of the Rapporteur on follow-up of decisions on complaints submitted under article 22

At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a rapporteur for follow-up of decisions on complaints submitted under article 22.

At its 527th meeting on 16 May 2002, the Committee decided that the Rapporteur for follow-up decisions on complaints submitted under article 22 shall have the mandate, inter alia, to monitor compliance with the Committee's decisions, inter alia by sending notes verbales to States parties inquiring about measures adopted pursuant to the Committee's decisions; to recommend to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; to meet with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the High Commissioner for Human Rights would be appropriate or desirable; to conduct with the approval of the Committee, follow-up visits to States parties; to prepare periodic reports to the Committee on his/her activities.

Annex X

Amended rules of procedure*

Beginning of term of office

Rule 12

1. The term of office of the members of the Committee elected at the first election shall begin on 1 January 1988. The term of office of members elected at subsequent elections shall begin on the day after the date of expiry of the term of office of the members whom they replace.

2. The Chairperson, members of the Bureau and rapporteurs may continue performing the duties assigned to them until one day before the first meeting of the Committee, composed of its new members, at which it elects its officers.

Term of office

Rule 16

Subject to the provisions of rule 12 regarding the Chairperson, members of the Bureau and rapporteurs, the officers of the Committee shall be elected for a term of two years. They shall be eligible for re-election. None of them, however, may hold office if he or she ceases to be a member of the Committee.

Establishment of subsidiary bodies

Rule 61

1. The Committee may, in accordance with the provisions of the Convention and subject to the provisions of rule 25, set up ad hoc subsidiary bodies as it deems necessary and define their composition and mandates.

2. Each subsidiary body shall elect its own officers and adopt its own rules of procedure. Failing such rules, the present rules of procedure shall apply mutatis mutandis.

3. The Committee may also appoint one or more of its members as rapporteurs to perform such duties as mandated by the Committee.

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* The full text of the rules of procedure incorporating these amendments will be issued as CAT/C/3/Rev.4.

Submission of reports

Rule 64

1. The States parties shall submit to the Committee, through the Secretary-General, reports on the measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force of the Convention for the State party concerned. Thereafter the States parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. In appropriate cases the Committee may consider the information contained in a recent report as covering information that should have been included in overdue reports.

3. The Committee may, through the Secretary-General, inform the States parties of its wishes regarding the form and contents as well as the methodology for consideration of the reports to be submitted under article 19 of the Convention, and issue guidelines to that effect.

Non-submission of reports

Rule 65

1. At each session, the Secretary-General shall notify the Committee of all cases of non-submission of reports under rules 64 and 67 of these rules. In such cases the Committee may take such action as it deems appropriate, including the transmission to the State party concerned, through the Secretary-General, of a reminder concerning the submission of such report or reports.

2. If, after the reminder referred to in paragraph 1 of this rule, the State party does not submit the report required under rules 64 and 67 of these rules, the Committee shall so state in the annual report which it submits to the States parties and to the General Assembly of the United Nations.

3. In appropriate cases the Committee may notify the defaulting State party through the Secretary-General that it intends, on a date specified in the notification, to examine the measures taken by the State party to protect or give effect to the rights recognized in the Convention, and make such general comments as it deems appropriate in the circumstances.

Attendance by States parties at examination of reports

Rule 66

1. The Committee shall, through the Secretary-General, notify the States parties, as early as possible, of the opening date, duration and place of the session at which their respective reports will be examined. Representatives of the States parties shall be invited to attend the meetings of the Committee when their reports are examined. The Committee may also inform a State party

from which it decides to seek further information that it may authorize its representative to be present at a specified meeting. Such a representative should be able to answer questions which may be put to him/her by the Committee and make statements on reports already submitted by his/her State, and may also submit additional information from his/her State.

2. If a State party has submitted a report under article 19, paragraph 1, of the Convention but fails to send a representative, in accordance with paragraph 1 of this rule, to the session at which it has been notified that its report will be examined, the Committee may, at its discretion, take one of the followings courses:

(a) Notify the State party through the Secretary-General that, at a specified session, it intends to examine the report in accordance with rule 66, paragraph 2, and thereafter act in accordance with rule 68; or

(b) Proceed at the session originally specified to examine the report and thereafter make and submit to the State party its provisional concluding observations. The Committee will determine the date on which the report shall be examined under rule 66, or the date on which a new periodic report shall be submitted under rule 67.

Conclusions and recommendations by the Committee

Rule 68

1. After its consideration of each report, the Committee, in accordance with article 19, paragraph 3, of the Convention, may make such general comments, conclusions or recommendations on the report as it may consider appropriate and shall forward these, through the Secretary-General, to the State party concerned, which in reply may submit to the Committee any comment that it considers appropriate. The Committee may, in particular, indicate whether, on the basis of its examination of the reports and information supplied by the State party, it appears that some of the obligations of that State under the Convention have not been discharged, and may, as appropriate, appoint one or more rapporteurs to follow up with its compliance of the Committee's conclusions and recommendations.

2. The Committee may, where necessary, indicate a time limit within which observations from States parties are to be received.

3. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 1 of this rule, together with any observations thereon received from the State party concerned, in its annual report made in accordance with article 24 of the Convention. If so requested by the State party concerned, the Committee may also include a copy of the report submitted under article 19, paragraph 1, of the Convention.

XIX. PROCEDURE FOR THE CONSIDERATION OF COMPLAINTS RECEIVED UNDER ARTICLE 22 OF THE CONVENTION

A. General provisions

Declarations by States parties

Rule 96

1. The Secretary-General shall transmit to the other States parties copies of the declarations deposited with him by States parties recognizing the competence of the Committee, in accordance with article 22 of the Convention.

2. The withdrawal of a declaration made under article 22 of the Convention shall not prejudice the consideration of any matter which is the subject of a complaint already transmitted under that article; no further complaint by or on behalf of an individual shall be received under that article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party has made a new declaration.

Transmission of complaints

Rule 97

1. The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, complaints which are or appear to be submitted for consideration by the Committee under paragraph 1 of article 22 of the Convention.

2. The Secretary-General, when necessary, may request clarification from the complainant as to his/her wish to have his/her complaint submitted to the Committee for consideration under article 22 of the Convention. In case there is still doubt as to the wish of the complainant, the Committee shall be seized of the complaint.

Registration of complaints; Rapporteur for new complaints and interim measures

Rule 98

1. Complaints may be registered by the Secretary-General or by decision of the Committee or by the Rapporteur on new complaints and interim measures.

2. No complaint shall be registered by the Secretary-General if:

(a) It concerns a State which has not made the declaration provided for in article 22, paragraph 1, of the Convention; or

(b) It is anonymous; or

(c) It is not submitted in writing by the alleged victim or by close relatives of the alleged victim on his/her behalf or by a representative with appropriate written authorization.

3. The Secretary-General shall prepare lists of the complaints brought to the attention of the Committee in accordance with rule 97 above with a brief summary of their contents, and shall circulate such lists to the members of the Committee at regular intervals. The Secretary-General shall also maintain a permanent register of all such complaints.

4. An original case file shall be kept for each summarized complaint. The full text of any complaint brought to the attention of the Committee shall be made available to any member of the Committee upon his/her request.

Request for clarification or additional information

Rule 99

1. The Secretary-General or the Rapporteur on new complaints and interim measures may request clarification from the complainant concerning the applicability of article 22 of the Convention to his/her complaint, in particular regarding:

(a) The name, address, age and occupation of the complainant and the verification of his/her identity;

(b) The name of the State party against which the complaint is directed;

(c) The object of the complaint;

(d) The provision or provisions of the Convention alleged to have been violated;

(e) The facts of the claim;

(f) Steps taken by the complainant to exhaust domestic remedies;

(g) Whether the same matter is being or has been examined under another procedure of international investigation or settlement.

2. When requesting clarification or information, the Secretary-General shall indicate an appropriate time limit to the complainant with a view to avoiding undue delays in the procedure under article 22 of the Convention. Such time limit may be extended in appropriate circumstances.

3. The Committee may approve a questionnaire for the purpose of requesting the above-mentioned information from the complainant.

4. The request for clarification referred to in paragraphs 1 (c)-(g) of the present rule shall not preclude the inclusion of the complaint in the list provided for in rule 98, paragraph 3.

5. The Secretary-General shall instruct the complainant on the procedure that will be followed and inform him/her that the text of the complaint shall be transmitted confidentially to the State party concerned in accordance with article 22, paragraph 3, of the Convention.

Summary of the information

Rule 100

For each registered complaint the Secretary-General shall prepare and circulate to the members of the Committee a summary of the relevant information obtained.

Meetings and hearings

Rule 101

1. Meetings of the Committee or its subsidiary bodies during which complaints under article 22 of the Convention will be examined shall be closed.

2. Meetings during which the Committee may consider general issues, such as procedures for the application of article 22 of the Convention, may be public if the Committee so decides.

Issue of communiqués concerning closed meetings

Rule 102

The Committee may issue communiqués, through the Secretary-General, for the use of the information media and the general public regarding the activities of the Committee under article 22 of the Convention.

Obligatory non-participation of a member in the examination of a complaint

Rule 103

1. A member shall not take part in the examination of a complaint by the Committee or its subsidiary body:

(a) If he/she has any personal interest in the case; or

(b) If he/she has participated in any capacity, other than as a member of the Committee, in the making of any decision on the case; or

(c) If he/she is a national of the State party concerned or is employed by that country.

2. Any question which may arise under paragraph 1 above shall be decided by the Committee without the participation of the member concerned.

Optional non-participation of a member in the examination of a complaint

Rule 104

If, for any other reason, a member considers that he/she should not take part or continue to take part in the examination of a complaint, he/she shall inform the Chairman of his/her withdrawal.

B. Procedure for determining admissibility of complaints

Method of dealing with complaints

Rule 105

1. In accordance with the following provisions, the Committee shall decide by simple majority as soon as practicable whether or not a complaint is admissible under article 22 of the Convention.

2. The working group established under rule 106, paragraph 1, may also declare a complaint admissible by majority vote or inadmissible by unanimity.

3. The Committee, the working group established under rule 106, paragraph 1, or the rapporteur(s) designated under rule 106, paragraph 3, shall, unless they decide otherwise, deal with complaints in the order in which they are received by the secretariat.

4. The Committee may, if it deems it appropriate, decide to consider two or more complaints jointly.

5. The Committee may, if it deems appropriate, decide to sever consideration of complaints of multiple complainants. Severed complaints may receive a separate registry number.

Establishment of a working group and designation of rapporteurs for specific complaints

Rule 106

1. The Committee may, in accordance with rule 61, set up a working group to meet shortly before its sessions, or at any other convenient time to be decided by the Committee, in consultation with the Secretary-General, for the purpose of taking decisions on admissibility or inadmissibility and making recommendations to the Committee regarding the merits of complaints, and assisting the Committee in any manner which the Committee may decide.

2. The Working Group shall comprise no less than three and no more than five members of the Committee. The Working Group shall elect its own officers, develop its own working methods, and apply as far as possible the rules of procedure of the Committee to its meetings. The members of the Working Group shall be elected by the Committee every other session.

3. The Working Group may designate rapporteurs from among its members to deal with specific complaints.

Conditions for admissibility of complaints

Rule 107

With a view to reaching a decision on the admissibility of a complaint, the Committee, its Working Group, or a rapporteur designated under rules 98 or 106, paragraph 3, shall ascertain:

(a) That the individual claims to be a victim of a violation by the State party concerned of the provisions of the Convention. The complaint should be submitted by the individual himself/herself or by his/her relatives or designated representatives, or by others on behalf of an alleged victim when it appears that the alleged victim is unable personally to submit the complaint and when appropriate, authorization is submitted to the Committee;

(b) That the complaint is not an abuse of the Committee's process or manifestly unfounded;

(c) That the complaint is not incompatible with the provisions of the Convention;

(d) That the same matter has not been and is not being examined under another procedure of international investigation or settlement;

(e) That the individual has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(f) That the time elapsed since the exhaustion of domestic remedies is not so unreasonably prolonged as to render consideration of the claims unduly difficult by the Committee or the State party.

Interim measures

Rule 108

1. At any time after the receipt of a complaint, the Committee, a working group, or the Rapporteur(s) for new complaints and interim measures may transmit to the State party concerned, for its urgent consideration, a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of alleged violations.

2. Where the Committee, the Working Group, or Rapporteur(s) request(s) interim measures under this rule, the request shall not imply a determination of the admissibility or the merits of the complaint. The State party shall be so informed upon transmittal.

3. Where a request for interim measures is made by the Working Group or Rapporteur(s) under the present rule, the Working Group or Rapporteur(s) should inform the Committee members of the nature of the request and the complaint to which the request relates at the next regular session of the Committee.

4. The Secretary-General shall maintain a list of such requests for interim measures.

5. The Rapporteur for new complaints and interim measures shall also monitor compliance with the Committee's requests for interim measures.

6. The State party may inform the Committee that the reasons for the interim measures have lapsed or present arguments why the request for interim measures should be lifted.

7. The Rapporteur, the Committee or the Working Group may withdraw the request for interim measures.

Additional information, clarifications and observations

Rule 109

1. As soon as possible after the complaint has been registered, it should be transmitted to the State party, requesting it to submit a written reply within six months.

2. The State party concerned shall include in its written reply explanations or statements that shall relate both to the admissibility and the merits of the complaint as well as to any remedy that may have been provided in the matter, unless the Committee, Working Group or Rapporteur on new complaints and interim measures has decided, because of the exceptional nature of the case, to request a written reply that relates only to the question of admissibility.

3. A State party that has received a request for a written reply under paragraph 1 both on admissibility and on the merits of the complaint, may apply in writing, within two months, for the complaint to be rejected as inadmissible, setting out the grounds for such inadmissibility. The Committee or the Rapporteur on new complaints and interim measures may or may not agree to consider admissibility separately from the merits.

4. Following a separate decision on admissibility, the Committee shall fix the deadline for submissions on a case-by-case basis.

5. The Committee or the Working Group established under rule 106 or rapporteur(s) designated under rule 106, paragraph 3, may request, through the Secretary-General, the State party concerned or the complainant to submit additional written information, clarifications or observations relevant to the question of admissibility or merits.

6. The Committee or the Working Group or rapporteur(s) designated under rule 106, paragraph 3, shall indicate a time limit for the submission of additional information or clarification with a view to avoiding undue delay.

7. If the time limit provided is not respected by the State party concerned or the complainant, the Committee or the Working Group may decide to consider the admissibility and/or merits of the complaint in the light of available information.

8. A complaint may not be declared admissible unless the State party concerned has received its text and has been given an opportunity to furnish information or observations as provided in paragraph 1 of this rule.

9. If the State party concerned disputes the contention of the complainant that all available domestic remedies have been exhausted, the State party is required to give details of the effective remedies available to the alleged victim in the particular circumstances of the case and in accordance with the provisions of article 22, paragraph 5 (b), of the Convention.

10. Within such time limit as indicated by the Committee or the Working Group or rapporteur(s) designated under rule 106, paragraph 3, the State party or the complainant may be afforded an opportunity to comment on any submission received from the other party pursuant to a request made under the present rule. Non-receipt of such comments within the established time limit should not generally delay the consideration of the admissibility of the complaint.

Inadmissible complaints

Rule 110

1. Where the Committee or the Working Group decides that a complaint is inadmissible under article 22 of the Convention, or its consideration is suspended or discontinued, the Committee shall as soon as possible transmit its decision, through the Secretary-General, to the complainant and to the State party concerned.

2. If the Committee or the Working Group has declared a complaint inadmissible under article 22, paragraph 5, of the Convention, this decision may be reviewed at a later date by the Committee upon a request from a member of the Committee or a written request by or on behalf of the individual concerned. Such written request shall contain evidence to the effect that the reasons for inadmissibility referred to in article 22, paragraph 5, of the Convention no longer apply.

C. Consideration of the merits

Method of dealing with admissible complaints; oral hearings

Rule 111

1. When the Committee or the Working Group has decided that a complaint is admissible under article 22 of the Convention, before receiving the State party's reply on the merits, the

Committee shall transmit to the State party, through the Secretary-General, the text of its decision together with any submission received from the author of the communication not already transmitted to the State party under rule 109, paragraph 1. The Committee shall also inform the complainant, through the Secretary-General, of its decision.

2. Within the period established by the Committee, the State party concerned shall submit to the Committee written explanations or statements clarifying the case under consideration and the measures, if any, that may have been taken by it. The Committee may indicate, if it deems it necessary, the type of information it wishes to receive from the State party concerned.

3. Any explanations or statements submitted by a State party pursuant to this rule shall be transmitted, through the Secretary-General, to the complainant who may submit any additional written information or observations within such time limit as the Committee shall decide.

4. The Committee may invite the complainant or his/her representative and representatives of the State party concerned to be present at specified closed meetings of the Committee in order to provide further clarifications or to answer questions on the merits of the complaint. Whenever one party is so invited, the other party shall be informed and invited to attend and make appropriate submissions. The non-appearance of a party will not prejudice the consideration of the case.

5. The Committee may revoke its decision that a complaint is admissible in the light of any explanations or statements thereafter submitted by the State party pursuant to this rule. However, before the Committee considers revoking that decision, the explanations or statements concerned must be transmitted to the complainant so that he/she may submit additional information or observations within a time limit set by the Committee.

Findings of the Committee; decisions on the merits

Rule 112

1. In those cases in which the parties have submitted information relating both to the questions of admissibility and the merits, or in which a decision on admissibility has already been taken and the parties have submitted information on the merits, the Committee shall consider the complaint in the light of all information made available to it by or on behalf of the complainant and by the State party concerned and shall formulate its findings thereon. Prior thereto, the Committee may refer the communication to the Working Group or to a rapporteur designated under rule 106, paragraph 3 to make recommendations to the Committee.

2. The Committee, the Working Group, or the rapporteur may at any time in the course of the examination obtain any document from United Nations bodies, specialized agencies, or other sources that may assist in the consideration of the complaint.

3. The Committee shall not decide on the merits of a complaint without having considered the applicability of all the admissibility grounds referred to in article 22 of the Convention. The findings of the Committee shall be forwarded, through the Secretary-General, to the complainant and to the State party concerned.

4. The Committee's findings on the merits shall be known as "decisions".

5. The State party concerned shall generally be invited to inform the Committee within a specific time period of the action it has taken in conformity with the Committee's decisions.

Individual opinions

Rule 113

Any member of the Committee who has participated in a decision may request that his/her individual opinion be appended to the Committee's decisions.

Follow-up procedure

Rule 114

1. The Committee may designate one or more rapporteur(s) for follow-up on decisions adopted under article 22 of the Convention, for the purpose of ascertaining the measures taken by States parties to give effect to the Committee's findings.

2. The rapporteur(s) may make such contacts and take such action as appropriate for the due performance of the follow-up mandate and report accordingly to the Committee. The Rapporteur(s) may make such recommendations for further action by the Committee as may be necessary for follow-up.

3. The rapporteur(s) shall regularly report to the Committee on follow-up activities.

4. The rapporteur(s), in discharge of the follow-up mandate, may, with the approval of the Committee, engage in necessary visits to the State party concerned.

Summaries in the Committee's annual report and inclusion of texts of final decisions

Rule 115

1. The Committee may decide to include in its annual report a summary of the complaints examined and, where the Committee considers appropriate, a summary of the explanations and statements of the States parties concerned and of the Committee's evaluation thereof.

2. The Committee shall include in its annual report the text of its final decisions, including its views under article 22, paragraph 7, of the Convention, as well as the text of any decision declaring a complaint inadmissible under article 22 of the Convention.

3. The Committee shall include information on follow-up activities in its annual report.

Annex XI

List of documents for general distribution issued for the Committee during the reporting period

A. Twenty-seventh session

Symbol	Title
CAT/C/21/Add.3	Initial report of Benin
CAT/C/47/Add.3	Initial report of Indonesia
CAT/C/54/Add.1	Third periodic report of Israel
CAT/C/55/Add.1	Fourth periodic report of Ukraine
CAT/C/47/Add.2	Initial report of Zambia
CAT/C/63	Provisional agenda and annotations
CAT/C/SR.485-502	Summary records of the twenty-seventh session of the Committee

B. Twenty-eighth session

Symbol	Title
CAT/C/55/Add.2	Fourth periodic report of Denmark
CAT/C/34/Add.14	Third periodic report of Luxembourg
CAT/C/55/Add.4	Fourth periodic report of Norway
CAT/C/34/Add.15	Third periodic report of the Russian Federation
CAT/C/42/Add.2	Initial report of Saudia Arabia
CAT/C/55/Add.3	Fourth periodic report of Sweden
CAT/C/53/Add.1	Second periodic report of Uzbekistan
CAT/C/64	Note by the Secretary-General listing initial reports due in 2002
CAT/C/65	Note by the Secretary-General listing second periodic reports due in 2002
CAT/C/66	Note by the Secretary-General listing third periodic reports due in 2002
CAT/C/67	Note by the Secretary-General listing fourth periodic reports due in 2002
CAT/C/68	Provisional agenda and annotations
CAT/C/SR.503-528	Summary records of the twenty-eighth session of the Committee

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